

|  |   |
|--|---|
| <p style="text-align: right;">Page 114</p> <p>1 at all.</p> <p>2 Q. Let's go to the next document.</p> <p>3 (May 2, 1995 Diary Entry was marked</p> <p>4 Exhibit Number 17 for identification.)</p> <p>5 Q. And I'll ask you if you recognize that as well</p> <p>6 as your handwriting.</p> <p>7 A. Yes.</p> <p>8 Q. And that's another page from your diaries, dated</p> <p>9 May 2nd, 1995, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Does that appear -- that top portion, does that</p> <p>12 appear to reference a telephone conversation</p> <p>13 with Patrice DeBregeas with his telephone number</p> <p>14 there?</p> <p>15 A. I'm not sure. I believe that this could have</p> <p>16 been -- since there's no notes next to it, this</p> <p>17 could have been only an attempted phone call,</p> <p>18 and I wanted to discuss three items with him.</p> <p>19 This leads me to believe that I did not get</p> <p>20 through to him because had I gotten through, I</p> <p>21 probably would have filled in comments for each</p> <p>22 of the categories of the things that I wanted to</p> <p>23 discuss.</p> <p>24 Q. And what are the three items -- the three</p>  | <p style="text-align: right;">Page 116</p> <p>1 A. Dr. Stote.</p> <p>2 Q. Dr. Stote. That's correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And I'll refer you to the second sentence. It</p> <p>5 says, "Therefore, I did not have the opportunity</p> <p>6 to meet with Mr. DeBregeas to discuss further</p> <p>7 negotiations regarding the contract." Do you</p> <p>8 see that?</p> <p>9 A. Yes.</p> <p>10 Q. And the contract you're referring to is some</p> <p>11 version of the manufacturing contract relating</p> <p>12 to omeprazole in Spain?</p> <p>13 A. Probably is.</p> <p>14 Q. Is that correct?</p> <p>15 A. Probably.</p> <p>16 Q. And let's look at another item.</p> <p>17 (Fax to Mr. DeBregeas from Mr. Murphy,</p> <p>18 dated July 13, 1995 was marked Exhibit</p> <p>19 Number 19 for identification.)</p> <p>20 Q. This is Exhibit 19. And I'll ask you if you</p> <p>21 recognize that document.</p> <p>22 A. Yes.</p> <p>23 Q. You do recognize that document?</p> <p>24 A. Yes.</p>              |
| <p style="text-align: right;">Page 115</p> <p>1 categories of items that you wanted to discuss</p> <p>2 with Mr. DeBregeas at Ethypharm?</p> <p>3 A. We've been trying to get a contract, as you can</p> <p>4 see, going back and forth, so I would probably</p> <p>5 ask him what's the status. Somebody has alerted</p> <p>6 me that there might be a problem with</p> <p>7 omeprazole. It could be a factory problem or</p> <p>8 quantity. I don't know. And I wanted to talk</p> <p>9 to him about transdermal activities.</p> <p>10 Q. Okay.</p> <p>11 A. So it might be talking both Bentley on some</p> <p>12 issues and Laboratorios Belmac on the others.</p> <p>13 Q. I'll show you another document from this time</p> <p>14 period.</p> <p>15 (Fax to Mr. De Basilio from Mr. Murphy,</p> <p>16 dated June 26, 1995 was marked Exhibit</p> <p>17 Number 18 for identification.)</p> <p>18 Q. Exhibit 18, and I'll ask if you recognize that</p> <p>19 document.</p> <p>20 A. Yeah.</p> <p>21 Q. Mr. Murphy, that's a document that was sent on</p> <p>22 Belmac Corporation U.S. letterhead from you as</p> <p>23 president and CEO of the U.S. entity, but it's</p> <p>24 signed by Mr. Stote; is that correct?</p> | <p style="text-align: right;">Page 117</p> <p>1 Q. And what is that?</p> <p>2 A. This is one of the drafts that went back and</p> <p>3 forth in an attempt --</p> <p>4 Q. Between?</p> <p>5 A. Between Ethypharm and Laboratorios Belmac in an</p> <p>6 attempt to get an agreement between our</p> <p>7 companies.</p> <p>8 Q. Okay. And this is sent to you -- I'm sorry, to</p> <p>9 Mr. DeBregeas at Ethypharm from you on or around</p> <p>10 July 13th, 1995; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And it says -- the enclosure says,</p> <p>13 "With this cover sheet, I enclose the contract</p> <p>14 with some modifications." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And that's your signature there?</p> <p>17 A. Yes.</p> <p>18 Q. Do -- the modifications here that are in</p> <p>19 English, is that your handwriting?</p> <p>20 A. Yes.</p> <p>21 Q. Now --</p> <p>22 A. I'm not sure if that's all mine. I want to make</p> <p>23 sure, but --</p> <p>24 Q. Take your time.</p> |

30 (Pages 114 to 117)

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1 A. Yeah. I'm not sure if all the handwriting is  
 2 mine.  
 3 Q. It's good to be specific on that. Let's look at  
 4 the first page of this Exhibit 19. At the top,  
 5 I take it -- that looks like it's written in  
 6 French. That's not your handwriting, correct?  
 7 A. That's not my handwriting.  
 8 Q. So we've established there's nothing on the  
 9 first page that's your handwriting, correct?  
 10 MR. STEWART: The first page, you're  
 11 talking about the Bates Page EP 00908?  
 12 MR. BOSTWICK: Right.  
 13 Q. Other than your signature?  
 14 A. Correct.  
 15 Q. So the handwritten indications other than your  
 16 signature are not yours on the first page,  
 17 correct? Correct?  
 18 A. Correct.  
 19 Q. So the second page, is that your handwriting?  
 20 It's 9009.  
 21 A. Yes.  
 22 Q. How about 9010? Is that all your handwriting?  
 23 A. I'm not sure of the bottom part here, which I  
 24 can't read, on Clause 1, the bottom part.

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1 Q. Okay.  
 2 A. I'm not sure if that's my handwriting. I mean  
 3 normally I can read my own handwriting.  
 4 Q. The rest of it is on the first page?  
 5 A. I believe --  
 6 Q. I'm sorry. On Page 9010.  
 7 A. I believe it is.  
 8 Q. How about -- there's nothing on the next page.  
 9 So 9012, is that all your handwriting?  
 10 MR. STEWART: Actually, there is  
 11 something on the next page, but it is a  
 12 strike-out.  
 13 MR. BOSTWICK: I apologize. Yes, we  
 14 wouldn't be able to tell that.  
 15 Q. 9012, is that all your handwriting?  
 16 A. I'm not sure of that.  
 17 Q. Okay. How about the next page, 9013?  
 18 A. Again, I'm not sure of all of it. Some of it is  
 19 mine.  
 20 Q. Okay. 9014?  
 21 A. I believe that's mine.  
 22 Q. Okay. 9015?  
 23 A. I believe that's mine.  
 24 Q. 9016?

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1 A. I'm not sure of that.  
 2 Q. Okay. How about 9017?  
 3 A. I don't believe that's mine at all.  
 4 Q. Okay. 9019?  
 5 A. That's mine.  
 6 Q. Now, this document, Exhibit 7 -- is it 19,  
 7 Exhibit 19, shows that you were directly  
 8 involved in the negotiation of the terms of this  
 9 relationship with Ethypharm at least in July of  
 10 1995; is that correct?  
 11 A. In the attempt, in the attempts to get an  
 12 agreement.  
 13 Q. In the negotiations, correct?  
 14 A. Yes, yes.  
 15 Q. When you say in your declaration, 18 --  
 16 Paragraph 18 that the terms of any agreements  
 17 between Belmac and Ethypharm were negotiated by  
 18 representatives of Belmac, specifically the  
 19 Belmac general managers, not Bentley, that's not  
 20 accurate given this -- given what we've just  
 21 looked at; is it?  
 22 A. It's still accurate.  
 23 Q. Why? What makes it accurate?  
 24 A. This is not an attempt. This is a draft, and an

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1 attempted agreement was never signed.  
 2 Q. Did Ethypharm and Belmac continue to manufacture  
 3 throughout this period?  
 4 MR. STEWART: When you say Belmac,  
 5 you're referring to Laboratorios Belmac?  
 6 MR. BOSTWICK: Yes, let me ask a  
 7 different question.  
 8 Q. Throughout 1995, did Laboratorios Belmac  
 9 continue to manufacture omeprazole and other  
 10 products for Ethypharm?  
 11 A. I believe they did.  
 12 Q. And did they do so based on the understandings  
 13 that were generally recognized in discussions  
 14 with you, Mr. DeBregeas, Mr. Adolfo de  
 15 Basilio --  
 16 MR. STEWART: Objection.  
 17 Q. -- Clemente Gonzalez and others?  
 18 MR. STEWART: Objection. It is vague  
 19 as applied -- vague with respect to any specific  
 20 document, and it calls for a generalized  
 21 conclusion from this witness.  
 22 Q. Do you need her to read back the question?  
 23 A. Please read it back.  
 24 (Reporter read back the last question.)

31 (Pages 118 to 121)

|  |   |
|--|---|
| <p style="text-align: right;">Page 122</p> <p>1 A. I believe they kept manufacturing based upon</p> <p>2 discussions between the Spanish management group</p> <p>3 and the -- of both companies, Laboratorios</p> <p>4 Belmac and Ethypharm Spain.</p> <p>5 Q. I'll show you another document.</p> <p>6 (Bentley Pharmaceuticals Board of</p> <p>7 Directors October 8, 1996 Meeting</p> <p>8 Minutes were marked Exhibit Number 20</p> <p>9 for identification.)</p> <p>10 Q. Before I ask you to look at that specifically,</p> <p>11 is it true that you are participating in these</p> <p>12 negotiations regarding Laboratorios Belmac</p> <p>13 because that's part of the corporate objective</p> <p>14 at Bentley?</p> <p>15 MR. STEWART: Objection.</p> <p>16 A. No.</p> <p>17 Q. Okay. Is it consistent or inconsistent with the</p> <p>18 corporate objectives of Bentley to have this</p> <p>19 manufacturing relationship with Ethypharm?</p> <p>20 A. Bentley is -- during this time period was not a</p> <p>21 profitable organization. So maintaining a</p> <p>22 relationship was important to both companies.</p> <p>23 Q. Does -- did Bentley at this time describe and</p> <p>24 define itself as a company engaged in</p> | <p style="text-align: right;">Page 124</p> <p>1 and fine chemicals in France and Spain." And</p> <p>2 I'll cut it short there for now. Is that an</p> <p>3 accurate statement of the description of the</p> <p>4 corporation Bentley Pharmaceuticals in 1996?</p> <p>5 A. Part of it.</p> <p>6 Q. So as of 1995 and 1996, is it your recollection</p> <p>7 that there was no global overarching agreement</p> <p>8 signed between Ethypharm and Belmac or Bentley;</p> <p>9 is that correct?</p> <p>10 A. That's my --</p> <p>11 MR. STEWART: Objection as to the term</p> <p>12 "global and overarching agreement" as vague,</p> <p>13 indefinite.</p> <p>14 A. I was going to answer my belief is there was not</p> <p>15 a large, global agreement in place.</p> <p>16 Q. But the work between the companies did continue,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And I want to turn your attention to the</p> <p>20 beginning of 1997 and ask you if you recall</p> <p>21 whether Ethypharm around that time made a</p> <p>22 decision to terminate the existing working</p> <p>23 relationship regarding the manufacture of</p> <p>24 omeprazole and other microgranulated products.</p>                      |
| <p style="text-align: right;">Page 123</p> <p>1 manufacturing in Spain?</p> <p>2 A. The company when it was talking on</p> <p>3 a consolidated basis would describe itself as a</p> <p>4 manufacturer of products of branded and generic</p> <p>5 nature and also doing basic research.</p> <p>6 Q. Let me refer you to the next exhibit, which I</p> <p>7 guess is Exhibit 20. Am I right on that?</p> <p>8 A. Yes.</p> <p>9 Q. And these, I take it, you recognize as board</p> <p>10 minutes of Bentley Pharmaceuticals, Inc.?</p> <p>11 A. Yes.</p> <p>12 Q. Dated October 8th, 1996?</p> <p>13 A. Yes.</p> <p>14 Q. And you're participating in this meeting as</p> <p>15 chairman and CEO of Bentley, correct?</p> <p>16 A. Yes.</p> <p>17 Q. All right. Let me refer you to 2756. And I'm</p> <p>18 going to read to you the corporate description</p> <p>19 in the Bentley board minutes of October 8th,</p> <p>20 1996. It says, "Bentley Pharmaceuticals, Inc.</p> <p>21 is an international pharmaceutical and health</p> <p>22 care company, engaged in manufacturing,</p> <p>23 marketing, and distribution of ethical</p> <p>24 pharmaceuticals, orphan drugs, biotech products,</p>   | <p style="text-align: right;">Page 125</p> <p>1 A. I believe that they did alert me that they'd</p> <p>2 like to terminate.</p> <p>3 Q. Okay. Let me show you another exhibit.</p> <p>4 (Fax to Mr. Dubois, et al. from</p> <p>5 Mr. Murphy, dated January 21, 1997, and</p> <p>6 Translation were marked Exhibit Number</p> <p>7 21 for identification.)</p> <p>8 Q. This Exhibit 21, Mr. Murphy, this is a document</p> <p>9 that's in Spanish. Thankfully, we've had very</p> <p>10 few of those today, but what we've done in those</p> <p>11 occasions is we try to provide a rough</p> <p>12 translation for you, and I'm not going to ask</p> <p>13 you to verify, obviously, whether the</p> <p>14 translation is correct. It's just a protocol</p> <p>15 that Mr. Stewart and I have agreed on for this</p> <p>16 case so that we can actually talk about the</p> <p>17 nature of these documents. Okay?</p> <p>18 MR. STEWART: I'm going to ask to go</p> <p>19 off the record for a minute while I get --</p> <p>20 MR. BOSTWICK: Sure.</p> <p>21 MR. STEWART: I was not provided with</p> <p>22 an English translation, so I want to go off the</p> <p>23 record and get my own copy.</p> <p>24 MR. BOSTWICK: Okay.</p> |

32 (Pages 122 to 125)

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1 THE VIDEOGRAPHER: The time is  
 2 12:36 p.m. We're going off the record.  
 3 (Discussion off the record)  
 4 THE VIDEOGRAPHER: The time is  
 5 12:38 p.m. We're back on the record.  
 6 Q. Okay. Do you recognize the document that you're  
 7 holding in your hand there, Exhibit 21?  
 8 A. No, I don't recognize it, but I've read the  
 9 translation.  
 10 Q. Okay. Do you remember -- obviously, you aren't  
 11 reading the Spanish version initially, but it is  
 12 clearly a fax dated January 20th, 1997 from  
 13 Adolfo de Basilio to Clemente Gonzalez? Is that  
 14 fair?  
 15 A. Yes.  
 16 Q. Just reading the translation of this -- and I  
 17 realize it's rough -- do you have a memory of  
 18 this event?  
 19 A. I don't remember the specific, but I do remember  
 20 the time period and the problems they were  
 21 encountering.  
 22 Q. Why don't you just -- setting that document  
 23 aside or using it as you like, describe for me  
 24 your own personal memory of this event.

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1 A. All right. I remember that Adolfo Basilio was  
 2 having communication problems and differences  
 3 with Clemente and --  
 4 Q. And that would be Clemente Gonzalez, the general  
 5 manager of Laboratorios Belmac?  
 6 A. Correct. So the two Spanish general managers  
 7 were having problems communicating and agreeing  
 8 with each other, and I believe that this then  
 9 was sent to me essentially as a request, "Will  
 10 you step in and try to resolve this issue?" We  
 11 had concerns. We had concerns about costs. We  
 12 had concerns about GMP, good manufacturing  
 13 practice, standards and bringing it up. "Can  
 14 you get in and help us resolve it?"  
 15 Q. And who is making that request of you when you  
 16 say --  
 17 A. Well, I think it was in various meetings I had  
 18 with Adolfo.  
 19 Q. Adolfo de Basilio?  
 20 A. Basilio of Ethypharm. It was expressed to me  
 21 and essentially asked for me to intercede and  
 22 try to get communications and things going for  
 23 them.  
 24 Q. Did Clemente Gonzalez agree with that or also

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1 request? What was his position on your  
 2 involvement?  
 3 A. Clemente at that time period felt pretty firm  
 4 that he was doing the best that he could do to  
 5 try to, you know, meet the wishes.  
 6 Q. And so am I correct that this letter, this  
 7 January 20th, 1997 letter basically comes as a  
 8 statement from Ethypharm that we are going to  
 9 end this relationship? Is that accurate?  
 10 A. Well, what I read into this is Ethypharm's  
 11 attempt -- an expression of frustration probably  
 12 with Mr. Gonzalez and, "Please tell your mother  
 13 company about this as well," probably trying to  
 14 get Clemente to be more responsive to them.  
 15 Q. Did you take the threat of -- strike that. Did  
 16 you take the possibility that Ethypharm was  
 17 actually going to end the relationship relating  
 18 to manufacturing Ethypharm's products in Spain  
 19 seriously?  
 20 A. Of course, I took it seriously.  
 21 Q. And what -- strike that. Did you consider this  
 22 a very important juncture in the relationship  
 23 between these various companies?  
 24 A. Yes.

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1 Q. Okay. Did Clemente Gonzalez send you a copy of  
 2 this January 20th, 1997 letter or did he call  
 3 you?  
 4 A. I don't know.  
 5 Q. How did you become aware this was an issue?  
 6 A. I don't know. I don't remember receiving a call  
 7 or receiving any communication with regard to  
 8 this.  
 9 Q. Now, you had the option, I take it, when you  
 10 became aware of this issue to say, "I'm not  
 11 involved in negotiating the terms of these  
 12 relationships. Don't speak to me. Talk to  
 13 Dr. Gonzalez," correct?  
 14 A. I would try to always have them deal with  
 15 Dr. Gonzalez. He had more intimate knowledge of  
 16 manufacturing, quantities, capacity that I  
 17 didn't have, and I wasn't there on a day-to-day  
 18 basis. So I'd always try to get Gonzalez to  
 19 deal with his counterpart at Ethypharm.  
 20 Q. But in this circumstance, you chose not to deal  
 21 with that -- with the negotiations in that  
 22 manner, correct, in other words, by referring  
 23 them back to Mr. Gonzalez?  
 24 A. I would always refer them back to Mr. Gonzalez,

33 (Pages 126 to 129)

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| <p style="text-align: right;">Page 130</p> <p>1 but I also would be responsive to Ethypharm if</p> <p>2 they asked me to be responsive and to help.</p> <p>3 Q. Okay. Let me show you another document. In</p> <p>4 this instance, do you recall specifically</p> <p>5 referring them back to Mr. Gonzalez to resolve</p> <p>6 this issue or did you take it upon yourself to</p> <p>7 help?</p> <p>8 A. No, I think I would do both. I think I would</p> <p>9 refer this back to Gonzalez, keep him alerted of</p> <p>10 any discussions that I would have, and I would</p> <p>11 also reach out to try to resolve an issue and</p> <p>12 dispute the disagreements.</p> <p>13 Q. Okay. You say, "I would do this." That was</p> <p>14 your testimony. I want to know if you have an</p> <p>15 actual, specific recollection in this instance</p> <p>16 of --</p> <p>17 A. I don't.</p> <p>18 Q. -- whether you referred to that?</p> <p>19 A. I don't have a specific recollection.</p> <p>20 (Fax to Mr. DeBregeas from Mr. Murphy,</p> <p>21 dated January 28, 1997 was marked</p> <p>22 Exhibit Number 22 for identification.)</p> <p>23 Q. I show you this document, and I'll ask you if</p> <p>24 you recognize it.</p> | <p style="text-align: right;">Page 132</p> <p>1 United States.</p> <p>2 Q. Well, you hadn't said that before. What is</p> <p>3 your --</p> <p>4 A. No, I'm just reading this on here. "I'm writing</p> <p>5 with regard to a fax that I received from your</p> <p>6 Spanish office."</p> <p>7 Q. Do you have a specific recollection of that?</p> <p>8 A. No. I'm wondering if it could be this.</p> <p>9 Q. Okay. When you say "this," Exhibit 21?</p> <p>10 A. This, Exhibit 21.</p> <p>11 Q. Now, is it reasonable for Ethypharm upon</p> <p>12 receiving this letter to understand that you</p> <p>13 have Bentley's authority to act for Laboratorios</p> <p>14 Belmac?</p> <p>15 MR. STEWART: Objection, competency.</p> <p>16 A. I do not know what Ethypharm would be thinking.</p> <p>17 Q. The second sentence says, "I am confused because</p> <p>18 ever since I assumed control of Laboratorios</p> <p>19 Belmac, I have received nothing but extremely</p> <p>20 positive comments from your Spanish staff." Do</p> <p>21 you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And that's true, you had taken control of</p> <p>24 Laboratorios Belmac around late '94 or early</p>  |
| <p style="text-align: right;">Page 131</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What is this letter?</p> <p>3 A. I think this is a response back to DeBregeas.</p> <p>4 Q. To Mr. DeBregeas at Ethypharm?</p> <p>5 A. Yeah.</p> <p>6 Q. In other words, is it a response to the</p> <p>7 January 20th letter that we just looked at as</p> <p>8 Exhibit 21?</p> <p>9 A. I believe it is.</p> <p>10 Q. And so the initial letter went from the local</p> <p>11 general manager to the other local general</p> <p>12 manager, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And then the response comes back from</p> <p>15 headquarters of Bentley to the headquarters of</p> <p>16 France; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you're listing yourself as James R. Murphy,</p> <p>19 chairman and CEO of Bentley Pharmaceuticals,</p> <p>20 Inc., correct, on the from line?</p> <p>21 A. This, I was responding from the United States</p> <p>22 and, obviously, had no stationery from</p> <p>23 Laboratorios Belmac, and they had apparently</p> <p>24 sent a fax to me. They had contacted me in the</p>   | <p style="text-align: right;">Page 133</p> <p>1 '95?</p> <p>2 A. Yes, as I became president, president of</p> <p>3 Laboratorios Belmac.</p> <p>4 Q. And is it reasonable for Ethypharm to understand</p> <p>5 that you have Bentley's authority to assume</p> <p>6 control of Laboratorios Belmac as -- that's the</p> <p>7 question.</p> <p>8 MR. STEWART: And I object on the</p> <p>9 grounds of competency of this witness to surmise</p> <p>10 as to what was reasonable or not in the minds of</p> <p>11 Ethypharm. You may answer.</p> <p>12 A. I do not know what Ethypharm was thinking.</p> <p>13 Q. Let me ask you. If you as the CEO of Bentley</p> <p>14 received a letter from the chairman and CEO of</p> <p>15 headquarters of U.S.A. of Johnson &amp; Johnson and</p> <p>16 the chairman and CEO of Johnson &amp; Johnson said,</p> <p>17 "I have assumed control of my Japanese</p> <p>18 subsidiary," wouldn't you understand that</p> <p>19 headquarters U.S.A. had authorized that takeover</p> <p>20 of control?</p> <p>21 MR. STEWART: Objection, hypothetical.</p> <p>22 A. I don't know how I'd respond to that.</p> <p>23 Q. Is it reasonable to think that the contents of</p> <p>24 this letter are approved and in concert with the</p> |

34 (Pages 130 to 133)



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1 interests of Bentley Pharmaceuticals, Inc.?

2 A. The contents of this letter, as I read it, the

3 subject is Laboratorios Belmac manufacturing for

4 Ethypharm. I'm stating that ever since I

5 became, essentially, control of president of

6 Laboratorios Belmac, I think a reasonable reader

7 would recognize this as Laboratorios Belmac.

8 Q. Why didn't you write as James Murphy, president

9 of Laboratorios Belmac on the from line if that

10 was your position?

11 A. This was the boilerplate facsimile in the

12 computer, and I was in the United States

13 responding.

14 Q. You propose, do you not, to have a discussion

15 about the future relationship between the

16 organizations and an agenda to discuss on

17 Page 2; is that correct?

18 A. Yes.

19 Q. And you propose that the discussion involve

20 arrangements to receive payments long overdue,

21 correct?

22 A. Yes.

23 Q. Belmac's proposal for a structure that would

24 provide a profitable operation for Ethypharm in

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1 Spain, correct?

2 A. Yes.

3 Q. And obtain an understanding of what problems, if

4 any, exist with Ethypharm, correct?

5 A. Yes.

6 Q. And the possible orderly departure of Ethypharm

7 from Belmac facilities, correct?

8 A. Yes.

9 Q. And that's a negotiation that you are proposing

10 to participate in, correct?

11 A. Yes.

12 Q. And, in fact, a discussion and a meeting does

13 take place relating to those topics and others,

14 correct?

15 A. Yes.

16 Q. And that takes place in the United States?

17 A. Could be or it could be in France.

18 Q. Do you recall meeting with Claude Dubois in

19 Philadelphia in the United States on this topic?

20 A. I know that I met with Claude Dubois. I do not

21 remember a specific meeting in Philadelphia.

22 MR. BOSTWICK: Okay. Why don't we go

23 off the record?

24 THE VIDEOGRAPHER: The time is

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1 12:55 p.m. We're going off the record.

2 (Luncheon recess)

3 THE VIDEOGRAPHER: The time is

4 2:09 p.m. We're back on the record.

5 Q. Good afternoon, Mr. Murphy.

6 A. Good afternoon.

7 Q. Let me ask you to take out two exhibits here

8 just to look at. The first one is right on top.

9 I think that's your declaration, number one.

10 A. Yes.

11 Q. And actually, the second one is right below

12 that. So that's exactly right. What is that,

13 Exhibit 22?

14 A. 22.

15 Q. Okay. So we're looking at your declaration as

16 Exhibit 1 and then the January 28th, 1997 letter

17 as Exhibit 21. Correct?

18 A. Correct -- 22.

19 Q. Or as Exhibit 22, 22. Looking at Exhibit 1, I

20 had read you earlier a sentence from your

21 declaration that says, "I am not and was not

22 involved in Bentley's -- in Belmac's

23 operations." Do you see that?

24 A. What number? What page?

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1 Q. Page 5, Paragraph 12. And it's about midway

2 through that paragraph. It says, "I am not and

3 was not involved in Belmac's operations." Do

4 you see that?

5 A. Yes.

6 Q. Now, in the letter on January 28th, you say, "I

7 have assumed control of Laboratorios Belmac."

8 You see that sentence?

9 A. Right.

10 Q. Isn't the fact that you assumed control of

11 Laboratorios Belmac an important fact that

12 you're leaving out of this declaration to the

13 court?

14 A. No, it's not. This is Belmac's operations. I

15 was not involved in operations. I mean it's

16 pretty hard to be involved in day-to-day

17 operations when you're only there three times a

18 year and the people don't speak English.

19 Q. Is it your testimony that throughout this period

20 from '95 to 2002 you were only in Spain three

21 times a year?

22 A. No, I was there more. It says in the same thing

23 you're referring to -- this is with Mr. Herrera

24 in the same section. Since Mr. Herrera is

35 (Pages 134 to 137)

Page 138

1 there, I'm not needed as frequently.

2 Q. Well, actually, the Paragraph Number 12 of your

3 sworn declaration starts, "Since 1994," correct?

4 Isn't that what that paragraph refers to?

5 A. No, I thought you were referring to here, "I am

6 not and was not involved with Belmac's

7 operations." You're referring to a different

8 line?

9 Q. Is it correct -- is your declaration correct

10 since 1994, you were not and was -- you are not

11 and were not involved in Belmac's operations?

12 Is that -- do you think that's a fair

13 characterization of the situation?

14 A. In operations, I believe that is fair.

15 Q. And even though you have assumed control of

16 Laboratorios Belmac, you don't think that fact

17 is important to alert the court to?

18 A. Assumed control as president of Laboratorios

19 Belmac.

20 Q. So I take it your answer is that you felt it was

21 not important to raise that fact in your

22 declaration?

23 A. I felt it was not important.

24 Q. Now, I had asked you right before we broke about

Page 139

1 an incident where Ethypharm was going to

2 terminate the relationship between the companies

3 relating to the manufacture of omeprazole. Do

4 you recall that?

5 A. Yes.

6 Q. And I believe we had agreed that there was a

7 meeting on that topic that did take place

8 between you and Mr. Dubois. Am I correct on

9 that?

10 A. Yes.

11 Q. And do you -- do you recall where this meeting

12 was held?

13 A. No, I do not.

14 Q. So you don't have any recollection --

15 A. You --

16 Q. I'm sorry.

17 A. I know from preparing for this that apparently

18 it happened in Philadelphia, but to further

19 answer your question, no, I don't remember the

20 meeting.

21 Q. So sitting here in the chair --

22 A. Yes.

23 Q. -- you can't draw a recollection of where you

24 met him?

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1 A. Can't picture the hotel or wherever we met. No,

2 I cannot.

3 Q. Can you picture Mr. Dubois?

4 A. Yes, I can picture him, and the only reason I

5 can picture him is because recently I

6 encountered him in a meeting in Madrid and he

7 introduced himself to me and I looked at his

8 name tag, and then I recognized him.

9 Q. Let me show you a document here.

10 (February 5, 1997 Diary Entry was marked

11 Exhibit Number 23 for identification.)

12 Q. And do you recognize Exhibit 23, Mr. Murphy, to

13 be another page of the diary that you have

14 produced in this litigation?

15 A. Yes.

16 Q. Okay. And do you recognize these as notes from

17 this meeting in Philadelphia or not?

18 A. I don't recognize them as notes from the

19 meeting, but I believe that it is.

20 Q. Okay. Now, you said you don't have a memory of

21 the specific meeting place or the location. Do

22 you recall the issues that were discussed at the

23 meeting independently of looking at this

24 Exhibit 23 or not at all?

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1 A. You mean if these notes would --

2 Q. If the notes aren't in front of you, do you have

3 any memory of the --

4 A. Without the notes or documents, no, I would not

5 remember this.

6 Q. Meeting at all?

7 A. No. I apologize. I wouldn't.

8 Q. So looking at -- now that we've established

9 that, let's see if this document helps refresh

10 any aspect of your memory. Okay?

11 A. Uh-huh.

12 Q. Do you recall a discussion that there were GMP

13 procedural problems and processing problems and

14 handling and storage problems, analytical and

15 control problems?

16 A. Yes, during this time period, there were issues

17 surrounding that.

18 Q. At Laboratorios Belmac?

19 A. That's correct.

20 Q. Relating to the products of omeprazole and other

21 products for Ethypharm?

22 A. Well, not just at Ethypharm, but it was an issue

23 of bringing the facility into compliance with

24 good manufacturing practices. It was the whole

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1 facility, which, of course, would affect  
 2 Ethypharm products as well as other products.  
 3 Q. Do you recall -- looking at that next line, do  
 4 you recall there was discussion or agreement  
 5 surrounding the production of 40 batches a year  
 6 of omeprazole?  
 7 A. I would believe that he was relaying information  
 8 to me concerning batches because I really didn't  
 9 know that much detail in manufacturing for  
 10 myself to talk about 40, 18 or any other  
 11 capacity. So I'm assuming that he is alerting  
 12 me to something here.  
 13 Q. Okay. How about this proposal down here? Do  
 14 you see that? About two-thirds of the way down,  
 15 it says "proposal" on the side, "40 million  
 16 pesetas per year equals 20 batches." Do you  
 17 recall any proposal, either you making a  
 18 proposal to him or him making a proposal to you?  
 19 A. Well, he must have made a proposal to me  
 20 because, as I just stated, I'm not familiar  
 21 enough with manufacturing issues to be able to  
 22 say or make a proposal for any capacity for any  
 23 production, so he must be making this or  
 24 alerting me of this in these notes.

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1 Q. Now, as I understand it, there is nobody else at  
 2 this meeting that you recall?  
 3 A. I don't know. I don't recall. Unfortunately, I  
 4 don't recall where this took place.  
 5 Q. How about on the next page, does any -- does  
 6 your review of any of that trigger any other  
 7 memories about this meeting in February of 1997?  
 8 A. No. You know -- I'm just giving you my gut  
 9 reaction to this. It appears as though I'm  
 10 getting an education. So somebody is filling me  
 11 in here. That's the best explanation I can give  
 12 you on this.  
 13 Q. Were you negotiating the terms of a continued  
 14 relationship?  
 15 A. No, I don't believe I was. I believe I was  
 16 listening and taking notes and finding out what  
 17 his issues were.  
 18 Q. Do you recall making any counterproposals to  
 19 Mr. Dubois?  
 20 A. No.  
 21 Q. And I guess what you're indicating with  
 22 Exhibit 23 is that really isn't helping you  
 23 refresh a present memory of this event; is that  
 24 right?

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1 A. That is correct.  
 2 Q. And what you can tell me about that event is  
 3 just what you're surmising from taking a look at  
 4 those notes?  
 5 A. Yes.  
 6 Q. Okay. Let me give you something a little more  
 7 concrete.  
 8 (Letter to Mr. Murphy from Mr. Dubois,  
 9 dated February 13, 1997 was marked  
 10 Exhibit Number 24 for identification.)  
 11 MR. STEWART: This is Exhibit 24?  
 12 MR. BOSTWICK: Yes.  
 13 Q. Okay. Is this a document that you recognize?  
 14 A. This appears to be a summary document of our  
 15 meeting.  
 16 Q. Do you recall receiving that letter?  
 17 A. I don't recall; but I must have. It's got my  
 18 name on it.  
 19 Q. Turning to the second paragraph there, it says,  
 20 "We," presumably meaning Ethypharm, right --  
 21 A. Uh-huh.  
 22 Q. -- "can only maintain manufacturing" -- pardon  
 23 me.  
 24 A. Easy for you to say.

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1 Q. Yes, exactly. "We can only maintain  
 2 manufacturing there," meaning Spain, "if we're  
 3 sure that an economical number of MHB batches  
 4 can be produced." Do you know what MHB stands  
 5 for?  
 6 A. No.  
 7 Q. Do you believe that that refers to omeprazole as  
 8 related in your notes?  
 9 A. MHB? I don't know. I don't even know what  
 10 MHB -- I couldn't even take a wild stab at it.  
 11 Q. And the target he notes is 40 batches. Does  
 12 that stir any recollections here?  
 13 A. He's apparently summarizing again and alerting  
 14 me because it's consistent with my notes of 40  
 15 batches. I would imagine so.  
 16 Q. And the next item he's got there is the GMP  
 17 procedures are improved, in other words, they  
 18 must be improved, correct?  
 19 A. Yes.  
 20 Q. And then the cost has to remain economically  
 21 viable; is that correct?  
 22 A. Yes.  
 23 Q. And then he says, "We propose for the next six  
 24 months we continue manufacturing in Zaragoza 20

37 (Pages 142 to 145)



|  |   |
|--|---|
| <p style="text-align: right;">Page 146</p> <p>1 batches," is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. "With all priorities given to this objective,"</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And the next paragraph down there is, "You</p> <p>7 suggested that your consultant in quality should</p> <p>8 visit Zaragoza." Do you have any memory of</p> <p>9 suggesting that a consultant from Bentley come</p> <p>10 to Zaragoza?</p> <p>11 A. No. This was during a time of the GMP issues</p> <p>12 that affected not only their products but ours,</p> <p>13 and we internally talked about trying to find a</p> <p>14 consultant in GMPs in the United States to send</p> <p>15 over to assist in Zaragoza. GMPs were enacted</p> <p>16 in the United States quite a few years before</p> <p>17 Europe had to enact similar qualities of GMP.</p> <p>18 So really your consultants and experts were</p> <p>19 throughout the United States, and that's what</p> <p>20 that would be referring to.</p> <p>21 Q. And the next sentence there is, "Monthly rent</p> <p>22 will be maintained at the present level for six</p> <p>23 months." Do you see that?</p> <p>24 A. Yes.</p>     | <p style="text-align: right;">Page 148</p> <p>1 Q. -- the terms of an agreement and a modification</p> <p>2 of the existing relationship with Ethypharm?</p> <p>3 A. No.</p> <p>4 Q. And why isn't that true?</p> <p>5 A. Because, as I said before, he was alerting me as</p> <p>6 to what batches MHB and all of that. I didn't</p> <p>7 know. I wouldn't negotiate that. I would</p> <p>8 listen to him and then call our management, give</p> <p>9 them a report, and then if these quantities were</p> <p>10 renegotiated and agreed to, it would be done</p> <p>11 between the general manager and the</p> <p>12 manufacturing unit. I only listened to his</p> <p>13 problems and essentially then followed up with</p> <p>14 our management, saying, "Try to solve these</p> <p>15 things." So he came to me asking for help.</p> <p>16 Q. Isn't it simpler than that in the sense that</p> <p>17 Ethypharm had said, "We're going to terminate,"</p> <p>18 then you met with Mr. Dubois and agreed to their</p> <p>19 proposal that, "We'll do a trial six-month run,</p> <p>20 here are the terms, and let's continue and see</p> <p>21 if it works"?</p> <p>22 A. I don't agree with that because it appears as</p> <p>23 though it was his proposal and that he was</p> <p>24 saying, "Okay. If you're going to try to work</p> |
| <p style="text-align: right;">Page 147</p> <p>1 Q. Do you remember discussing or negotiating that</p> <p>2 aspect with Mr. Dubois?</p> <p>3 A. No.</p> <p>4 Q. How about the last portion, "After the six</p> <p>5 months, if the objectives are met, we shall</p> <p>6 re-evaluate the monthly rent on a yearly basis,</p> <p>7 et cetera"? Do you remember that the framework</p> <p>8 was kind of a six-month trial period to see if</p> <p>9 the objectives could be met in order to continue</p> <p>10 this relationship?</p> <p>11 A. That's what I would read out of this, but I do</p> <p>12 not have a direct recollection of that from the</p> <p>13 meeting.</p> <p>14 Q. Okay. Let me refer you back to Exhibit 1 here,</p> <p>15 and you say in your sworn declaration that -- on</p> <p>16 Page 18 in the middle of the paragraph, "The</p> <p>17 terms of any agreements between Belmac and</p> <p>18 Ethypharm were negotiated by representatives of</p> <p>19 Belmac, specifically the Belmac general</p> <p>20 managers, not Bentley." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Isn't this an example of when you specifically</p> <p>23 negotiated --</p> <p>24 A. No.</p> | <p style="text-align: right;">Page 149</p> <p>1 to solve this problem, we will give you another</p> <p>2 six months," is the way I read this and I think</p> <p>3 is probably a more accurate portrayal of what's</p> <p>4 happened.</p> <p>5 Q. Did Mr. Dubois, to your knowledge, discuss this</p> <p>6 with any of the Belmac general managers as</p> <p>7 opposed to just yourself?</p> <p>8 A. I don't know. I don't know. He certainly would</p> <p>9 have discussed it with Adolfo Basilio, who was</p> <p>10 in constant contact with our people.</p> <p>11 Q. Let's take a look at Paragraph 24 of your</p> <p>12 declaration, and that paragraph discusses your</p> <p>13 interaction with Ethypharm, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And your contact with Ethypharm, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And the last sentence reads, "These contacts</p> <p>18 were sporadic and did not concern the omeprazole</p> <p>19 business between Ethypharm and Belmac." Do you</p> <p>20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. Isn't this 1997 meeting a prime example of a</p> <p>23 contact with an Ethypharm representative that</p> <p>24 specifically related to the omeprazole business</p>   |

38 (Pages 146 to 149)

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1 between Ethypharm and Belmac?

2 A. He was telling me his problems and addressing

3 his problems to me. So the resolution in any

4 sort of thing would have been directly by Spain,

5 not by me.

6 Q. Isn't it just easier than that, that this is a

7 contact, it's a meeting that's taking place and

8 there are letters that are passing back and

9 forth, direct contact with you relating to the

10 omeprazole business between Ethypharm and

11 Belmac?

12 A. It had to do with omeprazole and Belmac.

13 Q. Now, do you recall specifically being involved

14 in -- six months later in discussing the

15 specifics of a contract between Ethypharm and

16 Belmac relating to the omeprazole business?

17 A. When? Repeat that, please.

18 Q. Six months later.

19 A. I don't recall.

20 Q. Okay. In other words, according to this letter,

21 there was going to be a six-month trial period

22 from February to six months later, correct?

23 A. Uh-huh.

24 Q. Around August or so, do you recall being

Page 151

1 specifically involved in negotiations at that

2 six-month juncture with Ethypharm?

3 A. I don't recall, no.

4 Q. Let me show you a document.

5 (August 28, 1997 Diary Entry was marked

6 Exhibit Number 25 for identification.)

7 Q. I'll ask you if you recognize Exhibit 25 as

8 another page from your diaries that Bentley has

9 produced in this case?

10 A. Yes, I do.

11 Q. And this is notes of yours from a telephone call

12 with someone from Spain?

13 A. I believe it is.

14 Q. And I can represent to you that there were

15 contracts exchanged during this period, draft

16 contracts. This says, "Ethypharm, many

17 changes," and then there's some issues down

18 here, "Microgranulation, future limitation." Is

19 that what that says?

20 A. I don't know.

21 Q. How would you read that first bullet point

22 there?

23 A. "Microgranulation and future limitation."

24 Q. How about Number 2?

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1 A. "Exclusivity."

2 Q. 3?

3 A. "Omeprazole."

4 Q. 4?

5 A. "Too restrictive."

6 Q. And 5?

7 A. "Any changes in shareholders clause."

8 Q. And are those your -- is that your articulation

9 of issues that are present in the drafts of the

10 contracts sent back and forth with Ethypharm

11 around this time?

12 A. No. No, I don't believe it is. I believe that

13 somebody from Spain has phoned and has debriefed

14 me of these issues.

15 Q. Do you think you were reviewing this contract

16 yourself at this time, reviewing manufacturing

17 contracts between Ethypharm and Belmac?

18 A. I may have seen one, but I'm not -- I cannot

19 recollect. I think that there was definitely a

20 phone call from somebody in Spain, filling me in

21 as to what issues they see in this, whatever

22 draft of a contract would be.

23 Q. And these are your notes, and it says, "Tell

24 them we have previously spent tremendous amount

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1 of time and money in contract attempts. We will

2 not review such a restrictive and ludicrous

3 contract that includes control of Belmac

4 shareholders, et cetera." Is that correct?

5 A. Yes.

6 Q. And then does the rest read, "Until a new, more

7 reasonable version is received and then

8 become" -- "and they become current on their

9 bills." Have I read that correctly?

10 A. You've read that correctly.

11 Q. And is my understanding correct that's you

12 saying, "Here's what we need to tell them"?

13 A. Yes.

14 Q. Now, let's take a look at another document.

15 Actually, let's go to 1998. Do you recall that

16 no global agreement was signed in 1997? Is that

17 your recollection?

18 MR. STEWART: Objection. Objection as

19 "to the term "global agreement."

20 Q. No global agreement between Ethypharm and Belmac

21 was signed?

22 A. I'm not familiar with any global agreement.

23 Q. And do you recall a meeting at Ethypharm's

24 offices in Paris in the spring of 1998 that you

39 (Pages 150 to 153)

|  |  |
|--|--|
| <p style="text-align: right;">Page 154</p> <p>1 were involved in?</p> <p>2 A. There may have been a meeting there.</p> <p>3 Q. Okay. Let me give you a document that may help</p> <p>4 frame a reference.</p> <p>5 (Fax to Ms. Vaquero from Ms. Laura,</p> <p>6 dated March 31, 1998 was marked Exhibit</p> <p>7 Number 26 for identification.)</p> <p>8 MR. STEWART: Does this document have</p> <p>9 a translation?</p> <p>10 MR. BOSTWICK: It does not, but I'm</p> <p>11 only going to ask him about the people there,</p> <p>12 which are in universal language.</p> <p>13 Q. The only reason I'm showing you this document,</p> <p>14 Mr. Murphy, is so you can check the names. It</p> <p>15 appears to be hotel reservations for Paris.</p> <p>16 MR. STEWART: So this is to refresh</p> <p>17 his recollection as to whether he was in Paris</p> <p>18 at that time?</p> <p>19 MR. BOSTWICK: Yes, exactly.</p> <p>20 MR. STEWART: I see.</p> <p>21 Q. I'm not going to ask you about the substance of</p> <p>22 this actual document.</p> <p>23 MR. STEWART: And this is Exhibit 26?</p> <p>24 Or is this Exhibit 26?</p> | <p style="text-align: right;">Page 156</p> <p>1 Exhibit Number 27 for identification.)</p> <p>2 Q. I'll ask you to take a look at Exhibit 27 and</p> <p>3 also verify that that is a couple of pages from</p> <p>4 your diary, which has been produced to us in</p> <p>5 this litigation.</p> <p>6 MR. STEWART: What's the exhibit</p> <p>7 number of this?</p> <p>8 THE STENOGRAPHER: 27.</p> <p>9 A. Okay.</p> <p>10 Q. Is that from your diary?</p> <p>11 A. It's from my diary.</p> <p>12 Q. And it's your handwriting, in other words?</p> <p>13 A. Yes.</p> <p>14 Q. And the date on the top is April 2, 1998. Do</p> <p>15 you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And it indicates Ethypharm and then there are</p> <p>18 three names. What are those names there?</p> <p>19 A. Mr. Basilio, Mr. Dubois, Mr. Bernard Denube.</p> <p>20 Q. And would that be Mr. Adolfo de Basilio of</p> <p>21 Ethypharm Spain?</p> <p>22 A. Yes.</p> <p>23 Q. Mr. Claude Dubois of Ethypharm France?</p> <p>24 A. Yes.</p>   |
| <p style="text-align: right;">Page 155</p> <p>1 MR. BOSTWICK: Yes.</p> <p>2 MR. STEWART: Okay.</p> <p>3 A. What are you asking me, the names on here?</p> <p>4 Q. Well, I'll do it this way: On the second page</p> <p>5 of this exhibit, there appear to be hotel</p> <p>6 reservations made for five people or so around</p> <p>7 March -- late March or early April of 1998. And</p> <p>8 do the names on that list help refresh your</p> <p>9 recollection --</p> <p>10 A. No.</p> <p>11 Q. -- about whether you attended a meeting --</p> <p>12 A. No.</p> <p>13 Q. -- in Paris --</p> <p>14 A. Doesn't help me at all.</p> <p>15 Q. -- around this time?</p> <p>16 A. As a matter of fact, they don't even list my</p> <p>17 name.</p> <p>18 Q. Okay. You do see it says, "Mr. Murphy,"</p> <p>19 correct, which may be a misspelling of your</p> <p>20 name?</p> <p>21 A. Yes. I just don't recollect.</p> <p>22 Q. Let me show you another document that may or may</p> <p>23 not help refresh your memory.</p> <p>24 (April 2, 1998 Diary Entry was marked</p>  | <p style="text-align: right;">Page 157</p> <p>1 Q. And then another individual?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you know a Bernard Denube?</p> <p>4 A. He was in manufacturing of some sort, I believe.</p> <p>5 Q. Could you -- I'm having trouble with that first</p> <p>6 sentence there. I see the word "omeprazole," is</p> <p>7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Can you read the sentence in the little bullet</p> <p>10 point there?</p> <p>11 A. "Not largest enough to manufacture."</p> <p>12 Q. So, in other words, it says, "Ethypharm only" is</p> <p>13 that product?</p> <p>14 A. "Only product in Spain."</p> <p>15 Q. PDT is product?</p> <p>16 A. Yes.</p> <p>17 Q. So "omeprazole only product in Spain not largest</p> <p>18 enough to manufacture"?</p> <p>19 A. Yes. My English is not too good.</p> <p>20 Q. Do you know what that means at all?</p> <p>21 A. I don't know what it means.</p> <p>22 Q. Does looking at this first page at all refresh</p> <p>23 your memory of the events of that meeting or</p> <p>24 whether you attended?</p> |

40 (Pages 154 to 157)

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1 A. No, it's really not helping me at all.  
 2 Q. Let's turn --  
 3 MR. STEWART: Do you have a date, a  
 4 specific date in mind for this meeting?  
 5 MR. BOSTWICK: It says April 2, 1998  
 6 on the top page.  
 7 MR. STEWART: I understand that's what  
 8 it says on that, but do we know -- I don't know  
 9 that you've asked me whether this is a meeting,  
 10 whether this is a telephone call because I know  
 11 during this time period there were -- well, let  
 12 me withdraw. What I know and what I don't know  
 13 is totally irrelevant.  
 14 MR. BOSTWICK: That's fair enough.  
 15 Let me ask him a few more foundation questions  
 16 to establish a foundation of what you know or  
 17 don't know about this.  
 18 Q. Does the indication of these three gentlemen at  
 19 the top and the indication of Ethypharm indicate  
 20 to you that this was probably a meeting or a  
 21 telephone call with Ethypharm or not?  
 22 A. When I look at this together with the previous  
 23 Exhibit 26, I would believe this to be a  
 24 meeting.

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1 Q. Okay. Probably at the offices of Ethypharm in  
 2 Paris?  
 3 A. Yes.  
 4 Q. Or St. Cloud, as they call it?  
 5 A. Probably, yes.  
 6 Q. And does the -- okay. We've asked that  
 7 question. Let's go to the second page. And the  
 8 second page says, "Ethypharm problems solved,"  
 9 correct?  
 10 A. Yes.  
 11 Q. And Number 1 says -- is that "Good raw  
 12 material"?  
 13 A. "Good raw material."  
 14 Q. And Number 2 says, "Good formulation," "stable"  
 15 in parentheses?  
 16 A. Stable.  
 17 Q. Okay. And then what are the indications below  
 18 40?  
 19 A. It's \$40 -- 40,000 per kilo.  
 20 Q. Okay. So I see. 40K is \$40,000 per kilogram?  
 21 A. Yes.  
 22 Q. And the next one is 55K per kilogram, other?  
 23 A. Yes.  
 24 Q. Do you have any idea what that refers to?

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1 A. No, I really don't. I mean it sounds like an  
 2 awful high figure for any raw material, so I  
 3 really -- I don't know.  
 4 Q. Could it relate to omeprazole?  
 5 A. I don't know. It seems awful high.  
 6 Q. Could that be pesetas or -- would that be more  
 7 appropriate?  
 8 A. 1998. I really -- I don't know.  
 9 Q. Okay. Under that, it indicates "future" --  
 10 well, actually, before we get to that, do you  
 11 know what this means, "Ethypharm problems  
 12 solved" as of April 2, 1998, and "good  
 13 formulation, stable"? Do you know what that  
 14 means?  
 15 A. I must have run out of space and gone onto the  
 16 next page. You can see on the previous page we  
 17 are talking about raw material and a source of  
 18 raw material for three different potential  
 19 sources.  
 20 Q. For omeprazole?  
 21 A. For the API, the active pharmaceutical  
 22 ingredient, and then --  
 23 Q. Excuse me. Of the omeprazole product?  
 24 A. Yes, it would probably be omeprazole, yes,

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1 omeprazole. Then if you go to the next page,  
 2 apparently whatever they were discussing, which  
 3 was really the manufacturing people there at the  
 4 meeting, they agreed on a good source of raw  
 5 material.  
 6 Q. And the formulation was stable at this point?  
 7 A. Apparently the formulation is stable now.  
 8 Q. Okay. And it says, "Future, new relationship,  
 9 Ethypharm supply raw material, 20 to 24 batches,  
 10 enter 8 batches supply, enter today." Do you  
 11 see that?  
 12 A. Yes.  
 13 Q. Is that an indication of a framework of a new  
 14 modification of the existing relationship  
 15 between Ethypharm and your company?  
 16 A. It appears that this is the new number of  
 17 batches that the companies agreed on. If you  
 18 remember, this ties back to the previous two  
 19 documents you've given to me where they're  
 20 requesting for a certain number of batches.  
 21 Q. Okay. And going back to your declaration, on  
 22 Paragraph 24, when it says, "These contacts with  
 23 Ethypharm did not concern the omeprazole  
 24 business between Ethypharm and Belmac," this

41 (Pages 158 to 161)



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| <p style="text-align: right;">Page 162</p> <p>1 meeting, to the best of your understanding, did<br/>2 relate to omeprazole between Ethypharm and<br/>3 Belmac, correct?<br/>4 MR. STEWART: Objection. You're<br/>5 reading -- this is the second time you've done<br/>6 this. You've taken a quotation -- a piece of<br/>7 Exhibit 24 without the context of the entire<br/>8 paragraph.<br/>9 Q. Okay. You can answer.<br/>10 A. This -- these participants that were at this<br/>11 meeting, Gonzalez, Herrera, Berenguer, are all<br/>12 capable of addressing the concerns, the<br/>13 commitments and the details of the relationship<br/>14 with Ethypharm. If I'm present at this meeting,<br/>15 I'm not negotiating anything, nothing to do with<br/>16 omeprazole manufacturing in batches. I wasn't<br/>17 qualified to negotiate that nor would I<br/>18 negotiate that. I would leave that to the<br/>19 experts, which, as you can see from your list<br/>20 you just gave me, were here in this meeting.<br/>21 Q. My question is more limited, though. This is a<br/>22 contact with Ethypharm that you're involved with<br/>23 that does concern the omeprazole business<br/>24 between Ethypharm and Belmac, correct?</p> | <p style="text-align: right;">Page 164</p> <p>1 Q. Now, the last portion of this document,<br/>2 Exhibit 27, says, "Action Plan, switch to<br/>3 aqueous." Do you know what that refers to?<br/>4 A. That's an aqueous formulation of omeprazole.<br/>5 Q. What does that mean?<br/>6 A. The formulation that we were working with<br/>7 Ethypharm was an organic formulation. This is a<br/>8 water-based, aqueous, formulation, which<br/>9 Laboratorios Belmac was working themselves on a<br/>10 new formulation and Ethypharm was working<br/>11 independently to develop their formulation, as<br/>12 was many other companies. So I'm not whether --<br/>13 what this means, whether Ethypharm was telling<br/>14 us that they would like to talk to us about the<br/>15 aqueous, I'm not sure.<br/>16 Q. Okay. The second item listed under the Action<br/>17 Plan says, "Draft letter, BNT, noncompete using<br/>18 knowledge of Ethypharm." Do you see that?<br/>19 A. Yes.<br/>20 Q. BNT means Bentley?<br/>21 A. No. BNT, like I said earlier in our<br/>22 discussions, I frequently use BNT as "we" on a<br/>23 consolidated basis. So Bentley would not be<br/>24 using that. It would be Laboratorios Belmac.</p> |
| <p style="text-align: right;">Page 163</p> <p>1 A. I would be talking to Ethypharm about many<br/>2 things, and I would take the opportunity during<br/>3 my visits to Paris to talk about drug delivery,<br/>4 to talk about other collaborations, expanding<br/>5 opportunities between our organizations, whether<br/>6 it be Laboratorios Belmac or Bentley and drug<br/>7 delivery. So specific details on the<br/>8 omeprazole, I would just leave that to my<br/>9 management and let them do that. The fact that<br/>10 I was in attendance at this meeting, I was not<br/>11 an active participant in this.<br/>12 Q. Okay. You've said yourself you don't remember<br/>13 the meeting; is that correct?<br/>14 A. Right.<br/>15 Q. So my question is more limited. This is an<br/>16 actual meeting that you're involved in, you're<br/>17 taking notes at it, correct?<br/>18 A. Uh-huh.<br/>19 Q. That's correct?<br/>20 A. Yes, yes.<br/>21 Q. And it's a meeting that does concern the<br/>22 omeprazole business between Ethypharm and<br/>23 Belmac, correct?<br/>24 A. That may have been one item on the agenda.</p>  | <p style="text-align: right;">Page 165</p> <p>1 Q. Is BNT the -- strike that. Are the letters B N<br/>2 T the three letters used on the stock exchange<br/>3 to identify Bentley?<br/>4 A. Yes.<br/>5 Q. And just so I understand, your testimony is that<br/>6 when you wrote "draft letter, BNT, noncompete,<br/>7 using language of Ethypharm," you meant<br/>8 Laboratorios Belmac, not Bentley?<br/>9 A. That is correct, and that was a request from<br/>10 Ethypharm wanting this.<br/>11 Q. Okay. Just to finish up with Exhibit 27,<br/>12 Mr. Murphy, I take it that looking at this<br/>13 document doesn't help you draw in your own mind<br/>14 an actual personal memory of this meeting in<br/>15 Paris; is that correct?<br/>16 A. That is correct.<br/>17 Q. And you don't recall being shown in that meeting<br/>18 a draft confidentiality and noncompete agreement<br/>19 for Bentley and Belmac's signature?<br/>20 A. I don't. I don't recall.<br/>21 MR. BOSTWICK: Let's go off the<br/>22 record.<br/>23 THE VIDEOGRAPHER: The time is<br/>24 2:51 p.m. on July 19th, 2006. This is the end</p>   |

42 (Pages 162 to 165)



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| <p style="text-align: right;">Page 166</p> <p>1 of Tape Number 2 in the videotaped deposition of<br/> 2 James Murphy.<br/> 3 (Off the record)<br/> 4 (Recess)<br/> 5 THE VIDEOGRAPHER: The time is<br/> 6 2:57 p.m. on July 19th, 2006. This is Tape<br/> 7 Number 3 in the videotaped deposition of<br/> 8 Mr. James Murphy.<br/> 9 Q. Mr. Murphy, I'd like to turn our attention to an<br/> 10 incident that occurred in 1999, and before<br/> 11 showing you the documents, I just want to see if<br/> 12 you have a present memory of an issue that<br/> 13 Mr. DeBregeas raised with you about Clemente<br/> 14 Gonzalez's statements in the press about the<br/> 15 ownership of omeprazole. Do you have a memory of<br/> 16 of that?<br/> 17 A. Yes.<br/> 18 Q. Could you just tell me from your own perspective<br/> 19 off the top of your head what you recall about<br/> 20 that incident?<br/> 21 A. I remember that I got a fax, I believe, alerting<br/> 22 me to the fact that there had been an interview<br/> 23 in a newspaper and he -- if I remember<br/> 24 correctly, he was raising objection that we</p>  | <p style="text-align: right;">Page 168</p> <p>1 have collaboration with them in drug delivery;<br/> 2 we have common interests from Bentley's side and<br/> 3 your drug delivery side from Europe, let's see<br/> 4 if we can get together and let's see if we can<br/> 5 do something, recognizing any sort of<br/> 6 collaboration like that would be beneficial in a<br/> 7 press release and would help bring visibility<br/> 8 and validation to our companies. And I was not<br/> 9 over the years successful in being able to do<br/> 10 that. They did not want their name affiliated<br/> 11 with Laboratorios Belmac or Bentley.<br/> 12 You saw that I tried even to draft a<br/> 13 press release. That didn't go anywhere and was<br/> 14 not approved. This --<br/> 15 Q. Is this the one early in '95?<br/> 16 A. Yes. This had been going on for years. So in<br/> 17 this light, we honored their wishes of not<br/> 18 making public their name. So that's how I<br/> 19 responded in so many years.<br/> 20 Q. Okay. Let me show you a document.<br/> 21 (Fax to Mr. Rodriguez from<br/> 22 Ms. Joannesse, dated April 8, 1999 was<br/> 23 marked Exhibit Number 28 for<br/> 24 identification.)</p> |
| <p style="text-align: right;">Page 167</p> <p>1 never mentioned Ethypharm's name. And in that<br/> 2 interview, I think he was -- Clemente was<br/> 3 promoting our product, our Belmazol, our<br/> 4 trademark, our registration, our product that<br/> 5 was on the market, and I responded strongly back<br/> 6 to -- I don't know if Leduc or DeBregeas, one of<br/> 7 the two -- saying, "You didn't want us ever to<br/> 8 mention your name," and essentially trying to<br/> 9 explain we were promoting our trademark, our<br/> 10 Belmazol, our product, our registration, and<br/> 11 that it would bring in -- visibility and<br/> 12 increasing revenues and sales would be<br/> 13 beneficial to both companies.<br/> 14 Q. What do you mean by that Ethypharm didn't want<br/> 15 their name mentioned? You said something like<br/> 16 that.<br/> 17 A. If you remember, in the past, I had attempted to<br/> 18 expand -- in my role as president of<br/> 19 Laboratorios Belmac, I tried to increase<br/> 20 activities; manufacturing activities, contract<br/> 21 activities, bringing new products into the<br/> 22 company, by collaborating with Ethypharm, and as<br/> 23 you can see in the history here, it didn't go<br/> 24 anywhere. On other occasions, I had tried to</p> | <p style="text-align: right;">Page 169</p> <p>1 Q. And I'll ask you to tell me if you recognize it.<br/> 2 A. Is there something missing down at the bottom of<br/> 3 it?<br/> 4 Q. Well, it appears -- not to be in the role of<br/> 5 answering questions here, but it appears that<br/> 6 the second page is a fax transmission. It<br/> 7 doesn't have a full --<br/> 8 A. Okay.<br/> 9 Q. -- text.<br/> 10 A. Yes.<br/> 11 Q. Is that the fax that you were referring to from<br/> 12 Mr. DeBregeas raising this issue with you<br/> 13 directly?<br/> 14 A. Yes.<br/> 15 Q. Do you remember speaking with Mr. DeBregeas<br/> 16 about this issue apart from sending him a<br/> 17 written response?<br/> 18 A. No, I don't.<br/> 19 Q. Do you believe you did do that or do you just<br/> 20 have no memory one way or the other?<br/> 21 A. I really have no memory, but I would have -- I<br/> 22 think I would have remembered had he called me<br/> 23 or responded, and I don't think that he ever did<br/> 24 call me; and I don't think we ever talked about</p>   |

43 (Pages 166 to 169)

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| <p style="text-align: right;">Page 170</p> <p>1 it directly.</p> <p>2 Q. Let's talk about your options when you received</p> <p>3 this April 8th, 1999 letter. You could have</p> <p>4 responded by saying, "Clemente Gonzalez is</p> <p>5 responsible for this. He's the general manager</p> <p>6 of Spain. Take up your issues with him,"</p> <p>7 correct?</p> <p>8 A. I could have.</p> <p>9 Q. You could have responded and said,</p> <p>10 "Mr. DeRegeas, you've got this wrong. This is</p> <p>11 our intellectual property; it's not yours."</p> <p>12 Correct?</p> <p>13 A. Yes, I could have.</p> <p>14 Q. But you didn't do either one of those things,</p> <p>15 correct?</p> <p>16 A. I don't know. I don't remember what I did other</p> <p>17 than what I tried to summarize in the --</p> <p>18 whatever letter I sent to him.</p> <p>19 Q. All right. Let's take a look at another</p> <p>20 document.</p> <p>21 (Letter to Mr. DeRegeas from</p> <p>22 Mr. Murphy, dated April 9, 1999 was</p> <p>23 marked Exhibit Number 29 for</p> <p>24 identification.)</p>  | <p style="text-align: right;">Page 172</p> <p>1 letter, but I've given you Exhibit 29 because</p> <p>2 that one's easier to read.</p> <p>3 A. Okay.</p> <p>4 Q. Okay? Does that -- do you recognize that --</p> <p>5 A. Yes --</p> <p>6 Q. -- document?</p> <p>7 A. -- I do.</p> <p>8 Q. And that's sent a day after the letter</p> <p>9 Mr. DeRegeas faxed to you, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it's sent on Bentley letterhead, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And it's sent from you as chairman and CEO of</p> <p>14 Bentley Pharmaceuticals, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And the first line says, "I have received your</p> <p>17 letter concerning reference to Ethypharm</p> <p>18 technology and understand your concerns." Is</p> <p>19 that a fair statement of your point of view at</p> <p>20 the time?</p> <p>21 A. Yes, I understand his concerns that he would</p> <p>22 like to have visibility, as we would like to</p> <p>23 have visibility. That's -- yes.</p> <p>24 Q. Does that first sentence relate to all of the</p>   |
| <p style="text-align: right;">Page 171</p> <p>1 Q. I'm going to show you two, actually.</p> <p>2 (Letter to Mr. DeRegeas from</p> <p>3 Mr. Murphy, dated April 9, 1999, and</p> <p>4 Enclosure were marked Exhibit Number 30</p> <p>5 for identification.)</p> <p>6 Q. Mr. Murphy, before you get too far along, let me</p> <p>7 explain why I've given you two documents. I've</p> <p>8 given you Exhibit 29 and Exhibit 30. Exhibit</p> <p>9 29, I believe you'll find, is the same letter.</p> <p>10 There may be a couple of additional markings on</p> <p>11 it. It's the same letter. 29 is simply easier</p> <p>12 to read because it's larger text. I showed you</p> <p>13 Exhibit 30 not to strain your eyes, but just to</p> <p>14 show you that there was an attachment apparently</p> <p>15 with it that isn't a part of Exhibit 29. Do you</p> <p>16 understand what I'm saying?</p> <p>17 A. Not yet.</p> <p>18 Q. Why don't you take a look at them both? I think</p> <p>19 you'll find the first one is actually easier to</p> <p>20 read the text of the letter.</p> <p>21 A. Yes.</p> <p>22 Q. Do you understand what I mean by that? I'm just</p> <p>23 giving you that second document to show you that</p> <p>24 there may have been an attachment to this first</p> | <p style="text-align: right;">Page 173</p> <p>1 concerns that Mr. DeRegeas expresses in his</p> <p>2 first letter?</p> <p>3 A. I don't know if it expresses all of his</p> <p>4 concerns. I was just clearly saying -- pointing</p> <p>5 out to him this is the promotion of Belmazol.</p> <p>6 Again, Belmazol is a product, our product, our</p> <p>7 own issue.</p> <p>8 Q. It's true, isn't it, that you understood that</p> <p>9 the omeprazole that was being manufactured at</p> <p>10 Zaragoza in April of 1999 was being manufactured</p> <p>11 with Ethypharm know-how and technology? Isn't</p> <p>12 that correct?</p> <p>13 A. No, that's wrong.</p> <p>14 MR. STEWART: Objection.</p> <p>15 Q. What is your view about that issue?</p> <p>16 A. In 1998, Ethypharm signed a letter acknowledging</p> <p>17 that we had our own technology and our own</p> <p>18 product.</p> <p>19 Q. Were you manufacturing according to two</p> <p>20 different methods and protocol?</p> <p>21 MR. STEWART: At what time?</p> <p>22 Q. In 1998 and 1999.</p> <p>23 A. I do not know.</p> <p>24 Q. Okay. Did you consider writing back and saying</p> |

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| <p style="text-align: right;">Page 174</p> <p>1 "this is not your technology"?</p> <p>2 A. I don't know if I considered that or not.</p> <p>3 Q. Let's take a look at another document.</p> <p>4 MR. BOSTWICK: Here's what I'm going</p> <p>5 to do. I'm going to mark these as two separate</p> <p>6 documents, and I'll represent that they're two</p> <p>7 agreements that appear to have been signed on</p> <p>8 the same day. Okay? And I just want you to</p> <p>9 take a look at them together for that reason.</p> <p>10 (Contrato de Fabricacion and Translation</p> <p>11 was marked Exhibit Number 31 for</p> <p>12 identification.)</p> <p>13 (Carta de Compromiso de Compra and</p> <p>14 Translation was marked Exhibit Number 32</p> <p>15 for identification.)</p> <p>16 Q. What I'm going to do is they're in Spanish, so</p> <p>17 I'm going to paper-clip a rough translation to</p> <p>18 the back of each one.</p> <p>19 MR. STEWART: While the witness is</p> <p>20 reading that document, I looked at the</p> <p>21 translation that was attached -- this is the</p> <p>22 Ethypharm document, Ethypharm label. Anyway,</p> <p>23 the translation I looked at was not a very good</p> <p>24 translation, so I had another translation</p> | <p style="text-align: right;">Page 176</p> <p>1 which I believe you signed, it indicates that</p> <p>2 you did confer -- I think the word was</p> <p>3 "confer" -- with Mr. Herrera regarding these</p> <p>4 agreements or at least the manufacturing</p> <p>5 agreement. Can you tell me everything you</p> <p>6 remember -- and that statement, by the way,</p> <p>7 stands on its own. I'm not asking you to adopt</p> <p>8 that or not. Can you simply tell me everything</p> <p>9 you can recall about when you discussed these</p> <p>10 contracts with Mr. Herrera and the specifics of</p> <p>11 those discussions?</p> <p>12 A. All I remember is that he said that he had</p> <p>13 negotiated a supply agreement which gave us the</p> <p>14 rights to produce omeprazole for Ethypharm, for</p> <p>15 ourselves, for any of our customers, and that if</p> <p>16 there was any dispute arising, that it would be</p> <p>17 heard in Spanish courts.</p> <p>18 Q. Do you recall conferring with him before he</p> <p>19 actually signed the agreements or after or is it</p> <p>20 that you don't recall the time frame</p> <p>21 specifically?</p> <p>22 A. No, I don't remember discussing this beforehand</p> <p>23 with him to any degree, but I do remember him</p> <p>24 explaining this to me after, and it was only --</p> |
| <p style="text-align: right;">Page 175</p> <p>1 prepared. What I would like to do is offer this</p> <p>2 translation along with the translation that's</p> <p>3 attached. I have a copy. I'm happy to have you</p> <p>4 take a look at the copy as well.</p> <p>5 MR. BOSTWICK: Why don't we go off the</p> <p>6 record for just a second.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 3:14 p.m. We're going off the record.</p> <p>9 (Recess)</p> <p>10 (Discussion off the record)</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 3:17 p.m. We're back on the record.</p> <p>13 Q. My question to you is simple. Have you ever</p> <p>14 seen these contracts before?</p> <p>15 A. Yes.</p> <p>16 Q. In what context?</p> <p>17 A. I believe after these were executed --</p> <p>18 negotiated and executed by Adolfo Herrera, he</p> <p>19 notified me of that, and I think in a visit to</p> <p>20 Spain, he showed them to me or explained what</p> <p>21 they meant.</p> <p>22 Q. I believe -- and we can show it to you in a</p> <p>23 minute here, but I believe in the responses that</p> <p>24 Bentley has made to our formal interrogatories,</p>  | <p style="text-align: right;">Page 177</p> <p>1 I think only several days after these were</p> <p>2 endorsed.</p> <p>3 Q. I take it then it's -- well, let me ask the</p> <p>4 question. Did you have any discussions with</p> <p>5 anyone from Ethypharm about these agreements at</p> <p>6 any time?</p> <p>7 A. Not that I remember at all. No.</p> <p>8 Q. Other than later, they were subsequently</p> <p>9 terminated, correct?</p> <p>10 A. These were subsequently terminated.</p> <p>11 Q. Right. In other words -- let me clarify my</p> <p>12 question. Around the time that these were</p> <p>13 signed, Exhibits 31 and 32, do you recall having</p> <p>14 any discussions with anyone from Ethypharm Spain</p> <p>15 or Ethypharm France about these documents?</p> <p>16 A. I do not -- no, I do not recall having any</p> <p>17 discussions with anybody from Ethypharm France</p> <p>18 or Spain with regard to these before or after</p> <p>19 they were signed.</p> <p>20 Q. Okay. Anything else you want to say about those</p> <p>21 documents, 31 and 32?</p> <p>22 MR. STEWART: Objection.</p> <p>23 A. No.</p> <p>24 MR. STEWART: Which was Exhibit 30 and</p>  |

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| <p style="text-align: right;">Page 178</p> <p>1 which was Exhibit 31?</p> <p>2 MR. BOSTWICK: 31 has the 9 on top of</p> <p>3 it.</p> <p>4 THE WITNESS: It was 31 and 32, wasn't</p> <p>5 it?</p> <p>6 MR. BOSTWICK: Yes, it was 31 and 32.</p> <p>7 Q. How are you holding up?</p> <p>8 A. Fine.</p> <p>9 Q. You want to take a little break?</p> <p>10 A. How are you doing? You've got to be just as bad</p> <p>11 as I am.</p> <p>12 Q. The difference is they're paying me, and you're</p> <p>13 paying him. That makes it easier to me.</p> <p>14 A. You guys are all --</p> <p>15 THE WITNESS: Just kidding, just</p> <p>16 kidding, Craig.</p> <p>17 MR. STEWART: No, he's just trying to</p> <p>18 make up for going off the record so the</p> <p>19 stenographer can recoup the money she lost when</p> <p>20 you were going off the record. Enough of this</p> <p>21 chitchat, Gentlemen, let's get back to business.</p> <p>22 MR. BOSTWICK: Fair enough.</p> <p>23 Q. Let me give you another document, another</p> <p>24 exhibit. Before I show you this specific</p>  | <p style="text-align: right;">Page 180</p> <p>1 years since I've done that. I'd like to do</p> <p>2 that." He said, "Let's do it this afternoon.</p> <p>3 I've got a boat down there." I said, "Are you</p> <p>4 serious?" He said, "Yeah, we'll go</p> <p>5 water-skiing." I thought he was pulling my leg.</p> <p>6 I said, "Yeah, okay. Let's go." And realized</p> <p>7 that he was very serious, and he was going to</p> <p>8 take me water-skiing down that dirty river. So</p> <p>9 then --</p> <p>10 Q. I have to ask you before we go on. Did you</p> <p>11 actually go water-skiing?</p> <p>12 A. No, no, I didn't. I wasn't going to. I would</p> <p>13 have liked to. I was tempted. I didn't bring</p> <p>14 my swimming trunks.</p> <p>15 Q. That would be an historic event. I don't know</p> <p>16 that many people have done that.</p> <p>17 A. We talked there. It was a nice view from his</p> <p>18 office, and we got along quite well. We had</p> <p>19 long conversations there. I don't remember all</p> <p>20 the details, but the primary focus that I had at</p> <p>21 the time was to promote drug delivery and see</p> <p>22 where there could be some interests between the</p> <p>23 two companies, wearing the Bentley hat.</p> <p>24 And then another time, I met with him</p>   |
| <p style="text-align: right;">Page 179</p> <p>1 document, I believe you said in the response to</p> <p>2 the interrogatories that Bentley filed that you</p> <p>3 have a recollection of meeting with Pierre</p> <p>4 Germain on more than one occasion, and I would</p> <p>5 just like your memory as you sit here today of</p> <p>6 those different meetings. Can you separate them</p> <p>7 in your mind? Can you tell me -- why don't we</p> <p>8 start with the first meeting? Do you have a</p> <p>9 separate memory of a first meeting?</p> <p>10 A. I can remember two distinct locations, and I</p> <p>11 don't know whether it's the first or the second.</p> <p>12 Q. Okay. Fair enough.</p> <p>13 A. One was in his office soon after he arrived.</p> <p>14 Q. Mr. Germain's office?</p> <p>15 A. Mr. Germain's. And I was teasing him and giving</p> <p>16 him a hard time about the selection of</p> <p>17 furniture, which he selected himself. And I</p> <p>18 remember we were talking. In a joking fashion,</p> <p>19 I said, "There's somebody water-skiing down</p> <p>20 the" -- what's that river, Rhein, Rhone? What</p> <p>21 the one through Paris?</p> <p>22 Q. The Seine?</p> <p>23 A. Yes, the Seine. There's a guy water-skiing at</p> <p>24 lunchtime. I said, "Geez, it's been a couple of</p> | <p style="text-align: right;">Page 181</p> <p>1 at a restaurant/bar, and we were sitting in</p> <p>2 couches. It was a very nice place, but it was</p> <p>3 strange you had couches to sit in rather than</p> <p>4 barstools. And at that time, we were discussing</p> <p>5 the fact that Ethypharm was considering going</p> <p>6 public, and I said maybe there's some</p> <p>7 opportunities here for the two companies and</p> <p>8 maybe we ought to look. We're already a</p> <p>9 publicly traded company. Maybe we ought to look</p> <p>10 at least on an informal basis whether merging</p> <p>11 these two companies would make sense since we</p> <p>12 had common interests. So those are two distinct</p> <p>13 locations I remember having meetings with him.</p> <p>14 Q. Let's go to the meeting in Paris when you</p> <p>15 initially talked about the water-skiing. Is</p> <p>16 there anything else of substance relating to</p> <p>17 Ethypharm, Belmac, Bentley that you can recall</p> <p>18 that was discussed at that meeting?</p> <p>19 A. With regard to -- let me understand your</p> <p>20 question correctly. With regard to Laboratorios</p> <p>21 Belmac and Ethypharm?</p> <p>22 Q. Anything related to any of the four companies;</p> <p>23 Ethypharm France, Ethypharm Spain, Bentley or</p> <p>24 Laboratorios Belmac. Is there anything</p> |

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| <p style="text-align: right;">Page 182</p> <p>1 substantive you can recall about discussions on</p> <p>2 any of those topics?</p> <p>3 A. No.</p> <p>4 Q. Okay. How about the second meeting in the</p> <p>5 couches? Is there anything substantive or</p> <p>6 specific you can remember about any of those</p> <p>7 four companies other than what you've told me?</p> <p>8 A. No.</p> <p>9 (Fax to Mr. Germain from Mr. Murphy,</p> <p>10 dated October 6, 2000 was marked Exhibit</p> <p>11 Number 33 for identification.)</p> <p>12 Q. Okay. Let me give you Exhibit 33.</p> <p>13 A. Yes, I now remember discussing this.</p> <p>14 Q. So the first thing is you recognize that as a</p> <p>15 fax sent from you at Bentley Pharmaceuticals to</p> <p>16 Pierre Germain at Ethypharm, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And the date is October 6th, 2000?</p> <p>19 A. Yes.</p> <p>20 Q. Is this something that you had -- strike that.</p> <p>21 Did you discuss the substance of this fax at one</p> <p>22 of the two meetings we were just talking about?</p> <p>23 A. Yes.</p> <p>24 Q. Which one?</p>  | <p style="text-align: right;">Page 184</p> <p>1 in our discussions about how and if this would</p> <p>2 make sense.</p> <p>3 Q. Do you recall anything he said about this --</p> <p>4 A. He was encouraging.</p> <p>5 Q. How about Number 2? And I guess before we go on</p> <p>6 to Number 2, you said he was encouraging. Do</p> <p>7 you specifically recall anything he said?</p> <p>8 A. I don't recall any of his words. I do recall</p> <p>9 his attitude and his response to this; that he</p> <p>10 thought this was a reasonable and could be a</p> <p>11 viable idea.</p> <p>12 Q. How about Number 2? What -- can you express to</p> <p>13 me --</p> <p>14 A. This is a continuation of the same discussion.</p> <p>15 What we're essentially saying here is that, you</p> <p>16 know, if you are, in fact, not in a highly</p> <p>17 profitable position in Spain, by eliminating</p> <p>18 office personnel and other expenses but being</p> <p>19 able to maintain distribution of some sort in</p> <p>20 Spain, the elimination of the overhead and</p> <p>21 everything may make it more interesting for you.</p> <p>22 Q. Can you explain for me what your Point Number 3</p> <p>23 means?</p> <p>24 A. Yes. He was -- his offices in Spain really,</p>   |
| <p style="text-align: right;">Page 183</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. Why don't you provide me with more</p> <p>3 detail, if you can, about these three topics</p> <p>4 that are specifically listed? Do you see the</p> <p>5 first one?</p> <p>6 A. Yes.</p> <p>7 Q. All right. Why don't you describe for me in</p> <p>8 your own words what you mean by Point Number 1?</p> <p>9 A. Okay. Point Number 1, that should read is -- I</p> <p>10 often make a mistake and say Bentley. That</p> <p>11 should read "Laboratorios Belmac."</p> <p>12 And we had spoken at one of our</p> <p>13 meetings about the fact that he wanted to close</p> <p>14 down the Spanish operation, and I had said to</p> <p>15 him, "You have a portfolio of products. I don't</p> <p>16 know how many. You have revenues. I don't know</p> <p>17 what that is. You have personnel and overhead.</p> <p>18 We're looking for opportunity to acquire</p> <p>19 additional product. We're looking for</p> <p>20 opportunity to expand." Maybe there is an</p> <p>21 opportunity here that we should be exploring</p> <p>22 about letting our Spanish operation administer</p> <p>23 their Spanish operation since they were going to</p> <p>24 close the offices anyway. And we were searching</p> | <p style="text-align: right;">Page 185</p> <p>1 from my understanding, consisted of only</p> <p>2 business development and an oversight function</p> <p>3 of manufacturing, and that seemed to be,</p> <p>4 according to my understanding, the core business</p> <p>5 that they had. And I thought that we might be</p> <p>6 able to help them expand their customer base. I</p> <p>7 mean we were manufacturing, I think, five or six</p> <p>8 other products for them. We thought we might be</p> <p>9 able to expand -- eliminate their office,</p> <p>10 eliminate their overhead, and expand their basic</p> <p>11 customers.</p> <p>12 Q. What do you mean by that -- the paragraph after</p> <p>13 Point Number 3? It says, "With regard to</p> <p>14 omeprazole opportunities, utilizing the organic</p> <p>15 formulation or the aqueous formulation and</p> <p>16 either Belmac Labs' formulation or a new</p> <p>17 formulation." That seems to be not a complete</p> <p>18 sentence.</p> <p>19 A. The mechanics of Belmac's registration was for</p> <p>20 an organic formulation and for new improvement.</p> <p>21 He said they were working on a new aqueous</p> <p>22 formulation. So that's really responding to</p> <p>23 those two different products.</p> <p>24 Q. It says, "I await response from Mr. Gerard Leduc</p> |

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| <p style="text-align: right;">Page 186</p> <p>1 and dates in the U.S.A." Do you see that?</p> <p>2 A. Yes. I don't know what that means.</p> <p>3 Q. Do you recall meeting with Mr. Leduc shortly</p> <p>4 after October 6th, 2000?</p> <p>5 A. I do not recall that.</p> <p>6 Q. Do you recall discussing the substance of this</p> <p>7 fax with Mr. Germain after October 6th, 2000?</p> <p>8 A. No, I do not recall that.</p> <p>9 Q. Would it refresh your memory to be told of a</p> <p>10 meeting with Mr. Leduc and Mr. Germain at a</p> <p>11 restaurant where you all sat at one table and</p> <p>12 Adolfo de Basilio, Adolfo Herrera, and Yves</p> <p>13 Liorzou sat at another table? Does that help</p> <p>14 refresh your memory?</p> <p>15 A. No. I don't know if that would be the same time</p> <p>16 that I was meeting with Pierre on other</p> <p>17 occasions. I really don't remember.</p> <p>18 Q. Do you recall an issue around that time of</p> <p>19 whether additional equipment would be or</p> <p>20 additional machines might be put in place at</p> <p>21 Zaragoza by either Ethypharm or Belmac?</p> <p>22 A. I remember there were discussions concerning</p> <p>23 additional equipment, but I don't remember</p> <p>24 discussing that with Ethypharm. I remember</p> | <p style="text-align: right;">Page 188</p> <p>1 Belmac; is that correct?</p> <p>2 MR. STEWART: What time period are we</p> <p>3 talking about now?</p> <p>4 MR. BOSTWICK: The end of 2000, early</p> <p>5 2001.</p> <p>6 A. It was profitable. I don't know what you mean</p> <p>7 by "very profitable." It was profitable for</p> <p>8 both companies.</p> <p>9 Q. Didn't omeprazole account -- the manufacture --</p> <p>10 strike that.</p> <p>11 Didn't the manufacturing relationship</p> <p>12 with Ethypharm account for a substantial portion</p> <p>13 of the revenues of both Laboratorios Belmac and</p> <p>14 Bentley in, say, 1998, 1999, 2000?</p> <p>15 A. Yes.</p> <p>16 Q. Now, that manufacturing relationship could have</p> <p>17 continued presumably if payments had been made</p> <p>18 and the arrangement wasn't terminated, correct?</p> <p>19 A. Could you please repeat that?</p> <p>20 (Reporter read back the last question.)</p> <p>21 A. Yes.</p> <p>22 Q. Ultimately, a decision was made to terminate</p> <p>23 that arrangement, to file and announce patents</p> <p>24 relating to omeprazole, lansoprazole, and other</p> |
| <p style="text-align: right;">Page 187</p> <p>1 discussing that with Adolfo Herrera or being</p> <p>2 debriefed by Adolfo Herrera on that.</p> <p>3 MR. BOSTWICK: Okay. This would be a</p> <p>4 good time for me to take a break. Is that all</p> <p>5 right?</p> <p>6 THE WITNESS: Sure.</p> <p>7 MR. STEWART: Fine.</p> <p>8 THE VIDEOGRAPHER: The time is</p> <p>9 3:36 p.m. We're going off the record.</p> <p>10 (Recess)</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 3:55 p.m. We're back on the record.</p> <p>13 Q. Okay. Mr. Murphy, around November of 2001,</p> <p>14 Ethypharm received a notice of the termination</p> <p>15 of the manufacturing agreement for the</p> <p>16 production of omeprazole. Are you familiar with</p> <p>17 that time frame --</p> <p>18 A. Yes.</p> <p>19 Q. -- and that issue?</p> <p>20 A. Yes, I am.</p> <p>21 Q. Taking you back to the end of 2000 or early</p> <p>22 2001, about a year before that termination, at</p> <p>23 that point in time, this was a very profitable</p> <p>24 relationship for both Ethypharm and Bentley and</p>   | <p style="text-align: right;">Page 189</p> <p>1 products. My question to you is, who made the</p> <p>2 decision to sever the ties with Ethypharm?</p> <p>3 A. It was Adolfo Herrera.</p> <p>4 Q. When was that decision made?</p> <p>5 A. I believe he made the decision around</p> <p>6 November -- when the termination letter was</p> <p>7 sent. It was around November. Was it 200- --</p> <p>8 Q. Let me show you the termination letter to fix</p> <p>9 the time frame in mind.</p> <p>10 (Letter to Mr. De Basilio from</p> <p>11 Mr. Herrera, dated November 14, 2001,</p> <p>12 and Translation were marked Exhibit</p> <p>13 Number 34 for identification.)</p> <p>14 A. I believe his decision was made just prior to</p> <p>15 this letter being issued. I don't know the</p> <p>16 exact date.</p> <p>17 Q. Just to be clear, I've handed you what's been</p> <p>18 marked as exhibit what?</p> <p>19 A. 34.</p> <p>20 Q. 34. And I take it you recognize that to be a</p> <p>21 termination letter giving notice that the ties</p> <p>22 between the companies and Ethypharm would be</p> <p>23 severed; is that correct?</p> <p>24 A. Yes.</p>  |

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1 Q. And the date of that letter is November 14th,  
2 2001?

3 A. Yes.

4 Q. And it's your testimony that Mr. Herrera made  
5 this decision around -- shortly before this  
6 letter was sent?

7 A. I'm assuming. That's when he notified me  
8 surely, that he felt this was in the company's  
9 best interests.

10 Q. Can you place in time whether it was in October,  
11 early November? What's the earliest it could  
12 have been?

13 MR. STEWART: The "this" meaning when  
14 Mr. Herrera notified him?

15 MR. BOSTWICK: When Mr. Herrera made  
16 the decision --

17 MR. STEWART: Oh, made the decision.

18 MR. BOSTWICK: -- to terminate this  
19 agreement.

20 A. I really do not know.

21 Q. When did he tell you?

22 A. I believe that he told me that he was going to  
23 do this sometime right before this date, and I  
24 don't know whether it was weeks or month, a

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1 month, two months. I don't know. I really  
2 don't know.

3 Q. Would the earliest have been September, for  
4 example?

5 A. I don't know.

6 Q. Okay. Do you remember the specific conversation  
7 you had when he told you he had decided to  
8 terminate this agreement?

9 A. I don't remember the specific conversation, but  
10 I believe it was probably in one of his periodic  
11 updates of what's going on in Spain.

12 Q. Am I right that this is a pretty big deal in the  
13 life of Laboratorios Belmac, to sever ties in  
14 this Ethypharm relationship? Is that correct?

15 A. I think it was a significant event.

16 Q. In fact, is there another commercial  
17 relationship that Laboratorios Belmac has had in  
18 the last ten years that has been more profitable  
19 than the relationship with Ethypharm?

20 A. I don't know. There are other relationships. I  
21 just don't have a breakdown of those.

22 Q. Would you say it's certainly one of the top  
23 commercial --

24 A. Yes.

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1 Q. -- relationships of all time that Laboratorios  
2 Belmac has been involved with?

3 A. Going back in time, yes. Going back in recent  
4 time, I'd say probably not.

5 Q. As of 2000, 2001, when it was terminated, when  
6 the relationship was severed?

7 A. Are you asking me if this was a very profitable  
8 relationship at this time of termination?

9 Q. Yes.

10 A. I don't believe it was.

11 Q. Okay. Over the course of the lifetime of the  
12 agreement -- the manufacturing agreements with  
13 Ethypharm, was it one of the most profitable  
14 relationships that Laboratorios Belmac had ever  
15 been involved in?

16 A. Going back in time, yes, it was.

17 Q. So you think that the year 2000 was not a  
18 particularly profitable year with respect to the  
19 Ethypharm relationship?

20 A. I don't know that for a fact. I don't know it  
21 was as profitable as in previous years or not.

22 Q. But at any rate, that's all publicly reported,  
23 correct?

24 A. Yes.

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1 Q. Why did Mr. Herrera make the decision to sever  
2 ties with Ethypharm?

3 A. I believe it was in the best interests of the  
4 company to go forward independently since we had  
5 our own technology and we were working on  
6 other -- new improvements.

7 Q. What was that decision based on?

8 A. I believe that was based on his projections that  
9 he would do periodically.

10 Q. Do you believe that there were projections that  
11 were actually generated within Laboratorios  
12 Belmac that showed the difference between how  
13 you would do if you were with Ethypharm and how  
14 you would do if you severed ties with Ethypharm?

15 A. I don't know. I don't know.

16 Q. Did you ever see anything like that from  
17 Laboratorios Belmac?

18 A. I think we discussed what the effect would be,  
19 but I don't remember any of the figures nor  
20 seeing any sort of a formal breakout of that.

21 Q. Did Bentley do any analysis of that?

22 A. No, no, we did not.

23 Q. Do you recall ever discussing the decision to  
24 terminate the relationship in November of

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| <p style="text-align: right;">Page 194</p> <p>1 2000 -- strike that.</p> <p>2 Do you recall ever discussing the</p> <p>3 decision to terminate this relationship with</p> <p>4 Ethypharm or to sever ties with Ethypharm with</p> <p>5 anyone other than Mr. Herrera?</p> <p>6 A. I do not recall.</p> <p>7 Q. Mr. Price?</p> <p>8 A. Oh, probably Mr. Price.</p> <p>9 Q. Can you draw up a specific recollection of that?</p> <p>10 A. No, I cannot.</p> <p>11 Q. When --</p> <p>12 A. But I'm sure him being the CFO, it must have</p> <p>13 been discussed.</p> <p>14 Q. Do you recall whether you discussed the issue</p> <p>15 with him before the November 14th termination</p> <p>16 letter or after?</p> <p>17 A. No, I do not recall.</p> <p>18 Q. Were you in agreement with the decision to</p> <p>19 terminate this relationship and continue to sell</p> <p>20 omeprazole under a different or allegedly</p> <p>21 different formulation?</p> <p>22 A. I had a lot of confidence in Adolfo, in his</p> <p>23 decisions and his growing the company, so I had</p> <p>24 no objection to his decision.</p>   | <p style="text-align: right;">Page 196</p> <p>1 Q. Do you actually remember -- sitting here today,</p> <p>2 do you remember saying that or is that something</p> <p>3 you think you would have said?</p> <p>4 A. No, that's something I would have said.</p> <p>5 Q. Something you think you would have said?</p> <p>6 A. Uh-huh.</p> <p>7 Q. That's a yes?</p> <p>8 A. That's a yes.</p> <p>9 Q. Did you tell anybody else at Bentley that this</p> <p>10 was going to happen before the November 14th,</p> <p>11 2001 notice letter was sent out?</p> <p>12 A. I don't recall, but possibly Mike Price, and I'm</p> <p>13 not even sure of that.</p> <p>14 Q. Did you have any type of formal Laboratorios</p> <p>15 Belmac board meeting to discuss and decide this</p> <p>16 issue?</p> <p>17 A. No.</p> <p>18 Q. Isn't it true that, in fact, Bentley and you</p> <p>19 made this decision many, many months before</p> <p>20 November 14th, 2001 --</p> <p>21 MR. STEWART: Objection.</p> <p>22 Q. -- to sever the ties with Ethypharm?</p> <p>23 A. Bentley did not make the decision.</p> <p>24 Q. Did you?</p>   |
| <p style="text-align: right;">Page 195</p> <p>1 Q. Did you feel -- I'm sorry. Strike that. Did</p> <p>2 Mr. Herrera need to seek your approval in order</p> <p>3 to take this action?</p> <p>4 A. No.</p> <p>5 Q. Not as Bentley?</p> <p>6 A. No.</p> <p>7 Q. And not in your capacity as president and</p> <p>8 consejero delegado unico of Laboratorios Belmac?</p> <p>9 A. He did seek and tell me about it, but I believe</p> <p>10 his powers would have allowed him to be able to</p> <p>11 do it regardless, if he felt that was best.</p> <p>12 Q. But at any rate, you were consulted before he</p> <p>13 took the action and you agreed, is that correct?</p> <p>14 A. He told me that he was considering doing this,</p> <p>15 yes.</p> <p>16 Q. And you agreed?</p> <p>17 A. I did not disagree.</p> <p>18 Q. Did you just remain silent on an issue this</p> <p>19 large or did you actually express an opinion?</p> <p>20 A. I think what I probably said was, "Adolfo,</p> <p>21 you've made all the right decisions. You've</p> <p>22 done a good job of guiding the company. If you</p> <p>23 feel this is the best interests of the company,</p> <p>24 then you can do what you feel is appropriate."</p> | <p style="text-align: right;">Page 197</p> <p>1 A. Did I make the decision?</p> <p>2 Q. Right.</p> <p>3 A. No. As I said before, I allowed Adolfo to make</p> <p>4 the decision and do what he felt was best for</p> <p>5 the company.</p> <p>6 (Copy of E-mail to Mr. Horvath from</p> <p>7 Mr. Fitzgibbons, dated November 2, 2000,</p> <p>8 and Attachment were marked Exhibit</p> <p>9 Number 35 for identification.)</p> <p>10 Q. Let me show you Exhibit 35. Do you recognize</p> <p>11 this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is this document?</p> <p>14 A. This is a management meeting summary that's put</p> <p>15 together for me by Paul Fitzgibbons.</p> <p>16 Q. How long have these project status reports been</p> <p>17 prepared inside Bentley?</p> <p>18 A. Let's see. I don't know, but I believe Paul</p> <p>19 joined the company in -- I think he joined the</p> <p>20 company in the year 2000 or around 2000 so --</p> <p>21 Q. Why did you begin to generate these types of</p> <p>22 management meeting reports?</p> <p>23 A. This is so we could just track -- Paul would</p> <p>24 help me keep abreast of all the different things</p> |

50 (Pages 194 to 197)

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| <p style="text-align: right;">Page 198</p> <p>1 and activities and hot issues that I should look</p> <p>2 at or be aware of at status. He was trying to</p> <p>3 keep me up to date.</p> <p>4 Q. So these management meeting reports will have a</p> <p>5 topic or a subject which is defined of something</p> <p>6 that needs to be done, correct?</p> <p>7 A. Or he might just tell me just the status, and we</p> <p>8 might see it from month to month to month with</p> <p>9 no action taken, nothing's been done. It's just</p> <p>10 like a tickler.</p> <p>11 Q. Okay. And it'll have a schedule -- that's the</p> <p>12 second column -- about when something needs to</p> <p>13 be done if something needs to be done, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And the last column is a priority level; is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Is C a low priority and A is a high priority?</p> <p>19 A. I believe so.</p> <p>20 Q. This is to a Mr. Horvath. Who is Mr. Jordan</p> <p>21 Horvath?</p> <p>22 A. He was in-house counsel.</p> <p>23 Q. He's no longer with Bentley?</p> <p>24 A. No.</p>                   | <p style="text-align: right;">Page 200</p> <p>1 Ethypharm; wasn't he?</p> <p>2 A. After the relationship with Ethypharm?</p> <p>3 Q. In other words, he was involved in assessing</p> <p>4 whether Laboratorios Belmac could continue on</p> <p>5 with the sale of omeprazole after severing ties</p> <p>6 with Ethypharm; wasn't he?</p> <p>7 A. I do not recall that.</p> <p>8 Q. Was he involved in reviewing patents and other</p> <p>9 technical aspects of omeprazole and</p> <p>10 lansoprazole?</p> <p>11 A. He was involved in coordinating and maintaining</p> <p>12 a handle on IP, all IP for Bentley and</p> <p>13 Laboratorios Belmac. He would just keep -- keep</p> <p>14 us up to date as to the status. He acted on the</p> <p>15 U.S. side as an intermediate -- intermediary</p> <p>16 between the company and outside patent counsel.</p> <p>17 He only reviewed status of patents in Europe,</p> <p>18 did not interact in between patent counsel in</p> <p>19 Europe and Laboratorios Belmac.</p> <p>20 Q. Now, he's a Bentley lawyer, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And not a Laboratorios Belmac lawyer?</p> <p>23 A. That's correct.</p> <p>24 Q. Didn't speak Spanish?</p> |
| <p style="text-align: right;">Page 199</p> <p>1 Q. What was -- how long did he hold that position?</p> <p>2 A. I think he held the position for approximately</p> <p>3 three years, maybe a little longer than three</p> <p>4 years.</p> <p>5 Q. When did he leave?</p> <p>6 A. Yes.</p> <p>7 Q. I'm sorry. When did he leave?</p> <p>8 A. Oh, I don't remember the exact date.</p> <p>9 Q. Was it a year or two years ago approximately?</p> <p>10 Do you have any idea?</p> <p>11 A. I would think it's -- I would think it's two</p> <p>12 years ago or more.</p> <p>13 Q. What is the reason he was let go or that he</p> <p>14 left?</p> <p>15 A. He didn't have an ability to fit into the</p> <p>16 management team, tended to be argumentative and</p> <p>17 difficult to work with.</p> <p>18 Q. Was there any specific issue that he crossed</p> <p>19 swords on that caused the problem?</p> <p>20 A. No, no.</p> <p>21 Q. He was involved in assessing the technological</p> <p>22 and other capacities for Laboratorios Belmac</p> <p>23 continuing on in the manufacture and sale of</p> <p>24 omeprazole after the relationship with</p> | <p style="text-align: right;">Page 201</p> <p>1 A. No.</p> <p>2 Q. Was he involved on an operational level in terms</p> <p>3 of helping to organize the change from being</p> <p>4 tied to Ethypharm in a manufacturing</p> <p>5 relationship and Laboratorios Belmac moving out</p> <p>6 on its own?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Let's look at Page 23179. I'll refer you to 11,</p> <p>9 12, 13, 14. Those topic areas relate to</p> <p>10 omeprazole, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the action items are for J. Horvath and Jim</p> <p>13 Murphy, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And your task is to handle some of these</p> <p>16 omeprazole issues with -- during a visit to</p> <p>17 Ethypharm in November of 2000, correct?</p> <p>18 A. Repeat that? And where are you referring to?</p> <p>19 Q. I'm referring to the boldfaced type at the</p> <p>20 bottom of 11, 12, 13, and 14, which says, "Jim</p> <p>21 to handle during visit to Ethypharm in</p> <p>22 November." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Does that refresh your memory about whether, in</p>   |

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| <p style="text-align: right;">Page 202</p> <p>1 fact, you went to Ethypharm in November to talk</p> <p>2 with them about the omeprazole relationship?</p> <p>3 A. I have no memory of visiting with them in</p> <p>4 November.</p> <p>5 Q. All those items are listed as a top priority,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And, again, these are Bentley management meeting</p> <p>9 notes, not Laboratorios Belmac management</p> <p>10 meeting notes, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Let's take a look at another document.</p> <p>13 (Diary Entry headed "Action Items - for</p> <p>14 Friday 02-16-01" was marked Exhibit</p> <p>15 Number 36 for identification.)</p> <p>16 Q. I'm going to show you Exhibit 36, and I'm going</p> <p>17 to ask you if that's something you recognize as</p> <p>18 being from your diary which has been produced to</p> <p>19 us by Bentley in this lawsuit.</p> <p>20 A. Okay.</p> <p>21 Q. That's correct?</p> <p>22 A. I'm sorry. What was the question again?</p> <p>23 Q. I'm asking you if this document, Exhibit 36, is</p> <p>24 from your diaries that have been produced to us</p> | <p style="text-align: right;">Page 204</p> <p>1 a designation that says Ethypharm. Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "Meeting sever tie."</p> <p>5 A. Uh-huh.</p> <p>6 Q. And it says something omeprazole, "Announce</p> <p>7 omeprazole"?</p> <p>8 A. Yes.</p> <p>9 Q. Is one of your action items to sever ties with</p> <p>10 Ethypharm as of 2-16-2001?</p> <p>11 A. I think it was a tickler for me to ask about it,</p> <p>12 to ask Adolfo about it.</p> <p>13 Q. It doesn't say, "Ask Adolfo," does it? It says,</p> <p>14 "Ethypharm meeting, sever tie, announce</p> <p>15 Ethypharm," correct?</p> <p>16 A. See the question marks under it? Which is a</p> <p>17 tickler for me, saying these are things that I</p> <p>18 wanted to ask him.</p> <p>19 Q. There's a question mark next to "announce</p> <p>20 omeprazole," whether to announce omeprazole? Is</p> <p>21 that what that says?</p> <p>22 A. Well, probably what the status is and whether we</p> <p>23 had progressed to a point we can announce. This</p> <p>24 may be with regard to the aqueous formulations.</p>                  |
| <p style="text-align: right;">Page 203</p> <p>1 in the context of this lawsuit.</p> <p>2 A. Yes, it is.</p> <p>3 Q. So this is your handwriting?</p> <p>4 A. Yes, it is.</p> <p>5 Q. This is action items for Friday, February 16th,</p> <p>6 2001, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And who are the people who you're with here? Is</p> <p>9 this -- it says compensation committee report.</p> <p>10 Who are those individuals?</p> <p>11 A. This is tickler file notes for myself, and</p> <p>12 that's probably Mike Price.</p> <p>13 Q. Yeah.</p> <p>14 A. I don't know which Bob that would be.</p> <p>15 Q. Jim?</p> <p>16 A. That's me. And Adolfo.</p> <p>17 Q. And that would be Adolfo Herrera?</p> <p>18 A. Yes.</p> <p>19 Q. And so these are notes -- this page and a half</p> <p>20 is notes to yourself about things you need to</p> <p>21 do, like a tickler?</p> <p>22 A. A tickler file. It was to refresh my memory to</p> <p>23 get updated on certain things.</p> <p>24 Q. If you look down two-thirds of the way, there's</p>  | <p style="text-align: right;">Page 205</p> <p>1 Q. What do you mean whether we could announce</p> <p>2 omeprazole?</p> <p>3 A. If we had filed patents, and once a patent is</p> <p>4 issued, it's a disclosable event. So we must</p> <p>5 keep abreast of it.</p> <p>6 Q. So it's "Ethypharm meeting, sever tie," and then</p> <p>7 a question about whether to announce omeprazole;</p> <p>8 is that correct?</p> <p>9 A. To the best of my recollection.</p> <p>10 Q. Now, let's show you another document, also from</p> <p>11 February.</p> <p>12 (Copy of E-mail to Mr. Murphy, et al.</p> <p>13 from Mr. Fitzgibbons, dated March 1,</p> <p>14 2001 was marked Exhibit Number 37 for</p> <p>15 identification.)</p> <p>16 Q. Mr. Murphy, I'm showing you Exhibit 37, and I'll</p> <p>17 ask you if that's a -- well, if you recognize</p> <p>18 that document.</p> <p>19 A. Yes.</p> <p>20 Q. What is that document?</p> <p>21 A. It's the periodic update that Paul summarizes</p> <p>22 for the board of directors.</p> <p>23 Q. Okay. And that's the Bentley board of</p> <p>24 directors, not the Laboratorios Belmac board of</p> |

52 (Pages 202 to 205)



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| <p style="text-align: right;">Page 206</p> <p>1 directors, correct?</p> <p>2 A. Yes.</p> <p>3 Q. So this is an operational update, correct?</p> <p>4 A. Yes.</p> <p>5 Q. That means operations that you're -- that</p> <p>6 Bentley is involved in, correct?</p> <p>7 A. Yes.</p> <p>8 Q. All right. If you look down at Number 1 --</p> <p>9 well, let's actually take a look at that first</p> <p>10 sentence there in the e-mail. "Below is the</p> <p>11 Bentley Pharmaceuticals operational update which</p> <p>12 is periodically distributed to the directors."</p> <p>13 And that's the board of directors of Bentley</p> <p>14 Pharmaceuticals, correct?</p> <p>15 A. Yes.</p> <p>16 Q. The next sentence says, "The update highlights</p> <p>17 our activities as discussed at our operations/</p> <p>18 staff meetings," correct?</p> <p>19 A. Yes.</p> <p>20 Q. So these are operational issues discussed at</p> <p>21 Bentley staff meetings, correct -- Bentley</p> <p>22 operations/staff meetings, correct?</p> <p>23 A. Yes.</p> <p>24 Q. So if you look under Item Number 1, Spain</p>   | <p style="text-align: right;">Page 208</p> <p>1 Q. Let me show you another document.</p> <p>2 MR. STEWART: The document we've just</p> <p>3 been looking at, that's Exhibit 36?</p> <p>4 THE STENOGRAPHER: 37.</p> <p>5 MR. STEWART: 37. Sorry.</p> <p>6 MR. BOSTWICK: So this would be 38.</p> <p>7 MR. STEWART: And Exhibit 36 is what?</p> <p>8 That's the diary?</p> <p>9 THE STENOGRAPHER: Yes.</p> <p>10 (March 27, 2001 Diary Entry was marked</p> <p>11 Exhibit Number 38 for identification.)</p> <p>12 Q. And I'll hand you Exhibit 38 and ask you to tell</p> <p>13 me whether that is also from your diary of</p> <p>14 events which has been produced or -- your diary</p> <p>15 which has been produced by Bentley in this case?</p> <p>16 A. Yes.</p> <p>17 Q. And the date on that appears to be March 27th,</p> <p>18 2001. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And that says Adolfo meeting. Would that be a</p> <p>21 meeting with Adolfo Herrera?</p> <p>22 A. Yes.</p> <p>23 Q. If you look at the second page there, there's a</p> <p>24 topic area of Patents omeprazole?</p> |
| <p style="text-align: right;">Page 207</p> <p>1 Activities, do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And you look under E, it says, "Ethypharm,</p> <p>4 negotiations terminated due to lack of full</p> <p>5 commitment from Ethypharm." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. So is it true that you had decided to terminate</p> <p>8 the negotiations with Ethypharm and sever ties</p> <p>9 with Ethypharm as early as February or March of</p> <p>10 2001?</p> <p>11 A. I do not know what this means. And negotiations</p> <p>12 on what? This might be drug delivery. I don't</p> <p>13 know what this is. It could be anything.</p> <p>14 Q. If you look at G, one of the operations issues</p> <p>15 to be dealt with here is "A new patent is being</p> <p>16 prepared for our organic formulation process for</p> <p>17 omeprazole and should be finished on March 9th."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So Bentley is preparing to -- preparing to move</p> <p>21 forward with this patent as part of its global</p> <p>22 strategy; is that fair?</p> <p>23 MR. STEWART: Objection.</p> <p>24 A. Yes.</p> | <p style="text-align: right;">Page 209</p> <p>1 A. Yes.</p> <p>2 Q. And you have microtablet -- Number 1 is</p> <p>3 "microtablet omeprazole or" what? How does that</p> <p>4 read?</p> <p>5 A. I don't know. RES tablet. I don't know.</p> <p>6 Q. "Or RES tablet" perhaps. And that says</p> <p>7 "submitted." So that patent is submitted; is</p> <p>8 that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And Number 2 is "Micropellets, new improved</p> <p>11 process for granulation under vacuum," is that</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And that patent has been submitted, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And Number 3, "Omeprazole - eliminating step."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Then, there's a patent for lansoprazole, process</p> <p>20 patent, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you need API source, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Is that all in anticipation of severing the tie</p>  |

53 (Pages 206 to 209)

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| <p style="text-align: right;">Page 210</p> <p>1 with Ethypharm, you're going to need a new API</p> <p>2 source for omeprazole?</p> <p>3 A. No, the API source that you just referred to is</p> <p>4 not lansoprazole -- I mean was not omeprazole,</p> <p>5 was lansoprazole.</p> <p>6 Q. So you need an API source for lansoprazole is</p> <p>7 your understanding of those notes?</p> <p>8 A. Yes.</p> <p>9 Q. And "need DMF"?</p> <p>10 A. Drug master file.</p> <p>11 Q. What is that? Can you --</p> <p>12 A. Drug master file is all of the process and</p> <p>13 analytical procedures needed to produce API.</p> <p>14 Q. Is Mr. Herrera following Bentley's operational</p> <p>15 plan when he files these omeprazole and</p> <p>16 lansoprazole patents?</p> <p>17 MR. STEWART: Objection.</p> <p>18 A. No, not following Bentley's operational plan.</p> <p>19 Q. This is -- it's your testimony that he's</p> <p>20 following his own plan?</p> <p>21 A. He's following the plan for Laboratorios Belmac.</p> <p>22 Q. Are you directing that plan in any capacity?</p> <p>23 A. I am participating in that plan, of course, as</p> <p>24 both president of Laboratorios Belmac and for</p> | <p style="text-align: right;">Page 212</p> <p>1 Price has to do something with the Spanish</p> <p>2 operations? Do you know?</p> <p>3 A. I don't know.</p> <p>4 Q. Could it be either of those?</p> <p>5 A. I don't know what it is, to tell you the truth.</p> <p>6 I don't know whether this was a conversation</p> <p>7 with Mike or whether this was notes I wanted to</p> <p>8 ask Mike. I don't know.</p> <p>9 Q. Usually you write "Adolfo" at the top if it's a</p> <p>10 telephone call with Adolfo; don't you?</p> <p>11 A. Yes.</p> <p>12 Q. So you don't think this 5-23-2001 notation is a</p> <p>13 telephone call with Adolfo; do you?</p> <p>14 A. I don't think so because Adolfo's name may have</p> <p>15 been put there otherwise.</p> <p>16 Q. Let me ask you to look at Item Number 4. It</p> <p>17 says, "Ethypharm-expire March 2002. Six-month</p> <p>18 notice required September." Do you see that?</p> <p>19 A. Uh-huh. Yes.</p> <p>20 Q. Is that your indication that the manufacturing</p> <p>21 agreement that we looked at earlier dated March</p> <p>22 of 2000 was set to potentially expire in March</p> <p>23 2002 and that you believed that there was a</p> <p>24 six-month notice requirement in September?</p> |
| <p style="text-align: right;">Page 211</p> <p>1 the interests of the parent company.</p> <p>2 Q. Let me show you another document.</p> <p>3 (May 22 and May 23, 2001 Diary Entries</p> <p>4 was marked Exhibit Number 39 for</p> <p>5 identification.)</p> <p>6 Q. That's Exhibit 39, and my first question to you</p> <p>7 will be the same, which is, can you confirm for</p> <p>8 me that those are notes you took from your diary</p> <p>9 that has been produced to us by Bentley in this</p> <p>10 lawsuit?</p> <p>11 A. Yes.</p> <p>12 Q. And do you see the May 23rd, 2001 entry halfway</p> <p>13 down the page?</p> <p>14 A. Yes.</p> <p>15 Q. That says what, "Spain," something, "Mike</p> <p>16 Price"?</p> <p>17 A. Yes.</p> <p>18 Q. What's the little squiggle there? Do you know?</p> <p>19 A. Slash.</p> <p>20 Q. Oh, "Spain/Mike Price." What -- can you give me</p> <p>21 any context for that?</p> <p>22 A. No, I can't. I don't know what this means.</p> <p>23 Q. Could the "Spain/Mike Price" -- does it mean</p> <p>24 that you're talking to Mike Price or that Mike</p>  | <p style="text-align: right;">Page 213</p> <p>1 A. I don't know, or maybe Mike Price -- I don't</p> <p>2 know.</p> <p>3 Q. But that's what it refers to? It refers to the</p> <p>4 manufacturing agreement -- the March 2000</p> <p>5 manufacturing agreement that would expire</p> <p>6 potentially in March 2002?</p> <p>7 A. I believe it does.</p> <p>8 Q. And the six-month notice would refer to a notice</p> <p>9 that would have to be given early to Ethypharm,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. So is it fair to say that you're noting in</p> <p>13 May -- as early as May 23rd, 2001 in your own</p> <p>14 notes that you've got to be aware of this</p> <p>15 six-month notice deadline or what you perceive</p> <p>16 to be a six-month notice deadline? Isn't that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Let's look at the next document. Now,</p> <p>20 Mr. Murphy, the people at Ethypharm have no idea</p> <p>21 you're going to sever your tie with them at this</p> <p>22 stage in May -- February, March, April, May</p> <p>23 2001; isn't that true?</p> <p>24 MR. STEWART: Objection.</p>  |

54 (Pages 210 to 213)

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| <p style="text-align: right;">Page 214</p> <p>1 A. I don't know.</p> <p>2 MR. STEWART: The witness doesn't have</p> <p>3 any ability to read the minds of Ethypharm.</p> <p>4 Q. Well, you certainly didn't tell them that at</p> <p>5 this point; did you?</p> <p>6 A. I did not tell them.</p> <p>7 Q. And no one else did; to your knowledge, correct?</p> <p>8 A. I don't know if anybody else did.</p> <p>9 Q. I show you this document.</p> <p>10 (Fax to Mr. Murphy from Mr. Leduc, dated</p> <p>11 June 8, 2001, and Draft of Agreement</p> <p>12 were marked Exhibit Number 40 for</p> <p>13 identification.)</p> <p>14 Q. This is Exhibit 40. I'll ask you if you</p> <p>15 recognize that document.</p> <p>16 A. Yes.</p> <p>17 Q. All right. What do you recognize that document</p> <p>18 to be?</p> <p>19 A. This is a document apparently sent to me by</p> <p>20 Mr. Leduc.</p> <p>21 Q. From Ethypharm?</p> <p>22 A. From Ethypharm.</p> <p>23 Q. And it encloses a draft agreement relating to</p> <p>24 the manufacture of omeprazole at Belmac,</p>   | <p style="text-align: right;">Page 216</p> <p>1 and say, "As you know, I'm not the person that</p> <p>2 negotiates these agreements. That's my general</p> <p>3 manager. Talk to him"? You could do that?</p> <p>4 A. Yes.</p> <p>5 Q. But you didn't do that?</p> <p>6 A. No.</p> <p>7 Q. Did you contact Mr. Leduc at all about this</p> <p>8 letter?</p> <p>9 A. Not that I remember.</p> <p>10 Q. Did you call him to say, "Hey, we've made a</p> <p>11 decision at Bentley here in our operation update</p> <p>12 to terminate the negotiations, to sever the ties</p> <p>13 with Ethypharm, and we're contemplating giving</p> <p>14 notice in September"? Did you write him back</p> <p>15 and do that?</p> <p>16 MR. STEWART: Objection.</p> <p>17 A. No.</p> <p>18 Q. Do you recall giving Mr. Leduc or anyone at</p> <p>19 Ethypharm any indication of Bentley's or</p> <p>20 Belmac's plans about the continued relationship</p> <p>21 around June 8th, 2001?</p> <p>22 A. I don't recall giving any news.</p> <p>23 Q. Let's look at the next document.</p> <p>24 (Fax to Mr. Murphy from Mr. Herrera,</p>   |
| <p style="text-align: right;">Page 215</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's look at the third page of that</p> <p>4 document, which actually has a letter from</p> <p>5 Mr. Leduc, which is dated June 8th, 2001. Do</p> <p>6 you see that?</p> <p>7 A. The third page?</p> <p>8 Q. It's the third page of the exhibit. Well, maybe</p> <p>9 I'm wrong.</p> <p>10 MR. STEWART: It's Ethypharm 002011.</p> <p>11 MR. BOSTWICK: Exactly.</p> <p>12 Q. Now, Mr. Leduc refers to certain relations</p> <p>13 becoming strained, and he requests that you</p> <p>14 review this proposed agreement; and then he</p> <p>15 says, "I propose that" -- in the third</p> <p>16 paragraph, "I propose that you and me alone or,</p> <p>17 if necessary, assisted by one of our lawyers</p> <p>18 discuss this draft agreement." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And he's sending this to you at Bentley</p> <p>21 Pharmaceuticals, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, one option you have when you receive this</p> <p>24 document, of course, is to write Mr. Leduc back</p> | <p style="text-align: right;">Page 217</p> <p>1 dated June 15, 2001 was marked Exhibit</p> <p>2 Number 41 for identification.)</p> <p>3 Q. This is Exhibit 41. I ask you to take a look</p> <p>4 and tell me if you recognize it.</p> <p>5 A. I do not recognize or recall it.</p> <p>6 Q. Do you believe this is something you received</p> <p>7 from Adolfo Herrera around June 15th, 2001?</p> <p>8 A. I probably did receive this.</p> <p>9 Q. Now, this is on Laboratorios Belmac stationery</p> <p>10 from Adolfo Herrera, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And Mr. Herrera is writing you at Bentley</p> <p>13 Pharmaceuticals, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And he says, "Dear Jim," and then if you skip</p> <p>16 down, it says, "In our development plan" -- he's</p> <p>17 talking about registering certain products in</p> <p>18 Europe in the near future, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And it says, "In our development plan, they are</p> <p>21 included the following," and he includes</p> <p>22 lansoprazole, omeprazole tablets, the aqueous</p> <p>23 formulation of omeprazole as well, correct?</p> <p>24 A. Yes.</p> |

55 (Pages 214 to 217)

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| <p style="text-align: right;">Page 218</p> <p>1 Q. Now, when Mr. Herrera says, "Our development<br/>2 plans," does Laboratorios Belmac generate<br/>3 operational or development plans?<br/>4 A. Yes.<br/>5 Q. They do?<br/>6 A. They develop the development plan for each of<br/>7 these products.<br/>8 Q. So they have written development plans for<br/>9 lansoprazole, omeprazole tablets, and omeprazole<br/>10 aqueous?<br/>11 A. I don't know if they have a written plan but<br/>12 they have a schedule of R and D, which is a<br/>13 developmental pathway.<br/>14 Q. Now, Bentley --<br/>15 A. I've never seen the written developmental plan.<br/>16 Q. But Bentley has written developmental plans or<br/>17 operational plans that we've just seen, correct?<br/>18 A. We have it for drug delivery products, yes.<br/>19 Q. Okay. Mr. Herrera is referring to Bentley's<br/>20 development plan, isn't he, in this letter, in<br/>21 this fax?<br/>22 A. No.<br/>23 Q. That's not your understanding?<br/>24 A. My understanding is that he's referring to</p> | <p style="text-align: right;">Page 220</p> <p>1 think, "Helm - Patent review omeprazole." Do<br/>2 you see that?<br/>3 A. Yes.<br/>4 Q. Who is Helm?<br/>5 A. Helm is a -- I believe they are a broker.<br/>6 Q. A broker of what?<br/>7 A. A broker of what products, pharmaceutical<br/>8 products.<br/>9 Q. So why are you showing -- why are they doing a<br/>10 patent review of omeprazole --<br/>11 MR. STEWART: Objection.<br/>12 Q. -- at this point in time?<br/>13 MR. STEWART: There's no indication<br/>14 that Helm is doing a patent review.<br/>15 Q. Just a minute. The words say, "Helm - patent<br/>16 review omeprazole." Does that mean that Helm, a<br/>17 broker, is doing a patent review of omeprazole?<br/>18 A. I don't know what this -- what it really means.<br/>19 I really don't know.<br/>20 Q. How about do you see omeprazole -- a little<br/>21 further down, it says, "Ethypharm, 1.5 million<br/>22 more profit if break." Do you see that?<br/>23 A. Yes.<br/>24 Q. Does that mean there's 1.5 million more profit</p> |
| <p style="text-align: right;">Page 219</p> <p>1 Laboratorios Belmac's development plan to go<br/>2 beyond the borders of Spain into other EU<br/>3 nations with Laboratorios Bentley --<br/>4 Laboratorios Belmac products.<br/>5 Q. And that development plan, that isn't a<br/>6 development plan that's generated, strategically<br/>7 conceived by headquarters in the U.S.A.?<br/>8 A. No.<br/>9 Q. That's independently decided and developed<br/>10 strategically by Mr. Herrera --<br/>11 A. Yes.<br/>12 Q. -- at Laboratorios Belmac?<br/>13 A. Yes.<br/>14 Q. Let's look at the next document.<br/>15 (July 13, 2001 Diary Entry was marked<br/>16 Exhibit Number 42 for identification.)<br/>17 Q. Again, I'll ask you if you recognize that to be<br/>18 yet another of your handwritten notes from your<br/>19 diary.<br/>20 A. Yes, it is.<br/>21 Q. Okay. And this is a telephone call with Adolfo<br/>22 Herrera on July 13th, 2001?<br/>23 A. I believe it is.<br/>24 Q. Okay. And if you go down partway, it says, I</p>                                      | <p style="text-align: right;">Page 221</p> <p>1 if you break or terminate or sever the ties with<br/>2 Ethypharm?<br/>3 A. I believe it is.<br/>4 Q. And it says, "23rd November, cancel contracts.<br/>5 Four months' notice." Am I reading that<br/>6 correctly?<br/>7 A. Four months' notice --<br/>8 Q. Oh, maybe four months before. Does it say, "23<br/>9 November, cancel contract four months before"?<br/>10 A. Yes.<br/>11 Q. So that would be four months before the<br/>12 March 23rd, 2002 date of the potential end of<br/>13 the manufacturing agreement with Ethypharm,<br/>14 correct?<br/>15 A. Yes.<br/>16 Q. So it says, "23 March, supply agreement cancel,"<br/>17 correct? Did I read that correctly?<br/>18 A. I don't know what that means, "Supply agreement<br/>19 cancel."<br/>20 Q. Wasn't there a supply agreement and a<br/>21 manufacturing agreement signed on the same date<br/>22 we looked at, a purchase agreement, supply and<br/>23 purchase agreement?<br/>24 A. Yes, it probably does mean that.</p>                |

56 (Pages 218 to 221)

Page 222

1 Q. Okay. And then I'm having a little trouble with  
 2 this next line, "But," something, "agreement  
 3 will remain for another two years." Does that  
 4 mean manufacturing agreement will remain for  
 5 another two years?  
 6 A. That's what that says.  
 7 Q. Is that what you and Adolfo were discussing and  
 8 considering on July 13th, 2001, that you would  
 9 cancel the supply agreement and let stand the  
 10 manufacturing agreement?  
 11 MR. STEWART: Objection.  
 12 A. Adolfo was alerting me of what his decisions and  
 13 what actions he wanted to take.  
 14 Q. Okay. And then if you go over on the next page,  
 15 it says, "New Patents, aqueous lansoprazole,  
 16 organic omeprazole, and aqueous omeprazole." Do  
 17 you see that?  
 18 A. Yes.  
 19 Q. And is that an indication that you're -- part of  
 20 this decision to break a contract, as it's put  
 21 here --  
 22 MR. STEWART: Excuse me? Did you say  
 23 "break"?  
 24 MR. BOSTWICK: Yes, it says "break."

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1 Q. -- is wound up in having new patents so that  
 2 Laboratorios Belmac can continue to manufacture  
 3 lansoprazole and omeprazole in both its organic  
 4 and aqueous formulas?  
 5 A. No.  
 6 Q. What does it mean "New patents, aqueous  
 7 lansoprazole, organic omeprazole, and aqueous  
 8 omeprazole."  
 9 A. I don't know what that means, but what you said  
 10 would the break result in, and my answer is no.  
 11 I don't know what this is, probably just an  
 12 update on filing new patents.  
 13 (Diary Entry was marked Exhibit Number  
 14 43 for identification.)  
 15 Q. I'll ask you the same question about Exhibit 43.  
 16 Just if you can confirm that that's from your  
 17 diaries.  
 18 A. Yes.  
 19 Q. On Exhibit 43, this is -- this says "Glaxo" --  
 20 A. "Glaxo."  
 21 Q. "Glaxo SK." What is that?  
 22 A. SmithKline.  
 23 Q. "Mike Shaw and"?  
 24 A. "Paracetamol."

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1 Q. What does that refer to?  
 2 A. That's confidential. That has nothing to do  
 3 with this case.  
 4 Q. So that doesn't refer to anything related to  
 5 Ethypharm on the next line?  
 6 A. No.  
 7 Q. Fair enough. The next line says, "Ethypharm,  
 8 current status, plans for giving notice,"  
 9 correct?  
 10 A. Yes.  
 11 Q. So that's giving notice of termination?  
 12 A. Yes.  
 13 Q. On the next page, it says, "Spain," and then  
 14 refers to generic marketing, lansoprazole,  
 15 aqueous formulation of omeprazole, lansoprazole,  
 16 file the patent in September, and then it has a  
 17 list of five patents or activities. Do you see  
 18 that?  
 19 A. Yes.  
 20 Q. All right. Is that an expression of Bentley's  
 21 operational plan -- global operational plan for  
 22 how to move forward with respect to omeprazole  
 23 and lansoprazole?  
 24 A. No. This document that you've got here, these

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1 three pages, you notice there's no name --  
 2 there's no name, no phone call, no date. These  
 3 are just tickler notes to myself of things that  
 4 I wanted to follow up on or ask about or get  
 5 brought up to date on. And you'll see there's  
 6 quite a variety of things. Glaxo SmithKline,  
 7 Bristol Myers Squibb, on and on.  
 8 Q. These five items listed, these patents, is that  
 9 an expression of yours of things to do in your  
 10 hat as Bentley, in your hat as Laboratorios  
 11 Belmac or both?  
 12 A. This was just notes only for me to follow up and  
 13 become familiar with --  
 14 Q. Okay.  
 15 A. -- this data set. If it had to do with  
 16 Laboratorios Belmac, some issues, then it was as  
 17 president of Belmac. In other regards, it may  
 18 be Bentley's activities and coming up to date on  
 19 Bentley's activities. This is just notes to  
 20 myself.  
 21 MR. STEWART: Do we have a date for  
 22 these notes?  
 23 MR. BOSTWICK: This is the way they  
 24 were produced in the file.

57 (Pages 222 to 225)



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| <p style="text-align: right;">Page 226</p> <p>1 MR. STEWART: Well, I'm going to<br/>2 object, and I'm going to call for -- I'm going<br/>3 to call that Mr. Murphy's diaries that attend<br/>4 these notes be in the deposition room so that we<br/>5 can see what the date of these particular diary<br/>6 entries are. So I think -- we can either take a<br/>7 break now or we can take it in a couple moments,<br/>8 but I'm going to want to have Mr. Murphy have an<br/>9 opportunity to take a look and so we can see --<br/>10 we can see what the date of these entries are.<br/>11 MR. BOSTWICK: Well, they were his<br/>12 notes. You produced them. You have them here<br/>13 in the law office, but I've asked my questions<br/>14 on this document. I didn't hide a date. It<br/>15 just doesn't have one on it.<br/>16 MR. STEWART: I understand, but seeing<br/>17 as how we're at a time in the sequence where<br/>18 you've asked a number of questions pertaining to<br/>19 cancellation or nonrenewal of the contract, that<br/>20 I think it's only fair that we have some<br/>21 indication as to, as you've done before, where<br/>22 we are in that sequence.<br/>23 MR. BOSTWICK: Well, I'm prepared to<br/>24 move on to another document. That's all the</p> | <p style="text-align: right;">Page 228</p> <p>1 MR. BOSTWICK: Is that something you'd<br/>2 like?<br/>3 MR. STEWART: That's good. Okay.<br/>4 THE VIDEOGRAPHER: The time is<br/>5 4:57 p.m. We're going off the record.<br/>6 (Recess)<br/>7 THE VIDEOGRAPHER: The time is<br/>8 5:04 p.m. on July 19th, 2006. This is the end<br/>9 of Tape Number 3 of the videotaped deposition of<br/>10 Mr. James Murphy.<br/>11 (Recess)<br/>12 (Discussion off the record)<br/>13 THE VIDEOGRAPHER: The time is 5:19 on<br/>14 July 19th, 2006. This is Tape Number 4 of the<br/>15 videotaped deposition of Mr. James Murphy.<br/>16 (Fax to Mr. Murphy from Ms. Joannesse,<br/>17 dated August 10, 2001 was marked Exhibit<br/>18 Number 44 for identification.)<br/>19 Q. Mr. Murphy, you'll be happy to know I've only<br/>20 got a dozen more documents here or so.<br/>21 A. Okay.<br/>22 Q. Here's one of them, Exhibit 44. And I just ask<br/>23 if you recognize that document.<br/>24 A. Yes.</p>  |
| <p style="text-align: right;">Page 227</p> <p>1 questions that I had on this document. I don't<br/>2 think I asked a question about termination on<br/>3 that, but maybe I did.<br/>4 MR. STEWART: Let me ask. I'm going<br/>5 to want to take a break in any event because<br/>6 we've been going about an hour now since the<br/>7 last break. In fact, a little bit more, and I<br/>8 think what I want to do is to get the -- have<br/>9 the document -- have the diaries in the<br/>10 conference room in the event that the witness<br/>11 needs to refresh his memory with respect to<br/>12 dates and so forth. So whether this is the<br/>13 appropriate time or within the next couple of<br/>14 minutes doesn't much matter, but I'm going to<br/>15 want to take a break shortly.<br/>16 MR. BOSTWICK: It strikes me as two<br/>17 separate issues. One is whether we need to<br/>18 collect those. I'm looking now. Every other<br/>19 item I have has a date on it. I have two more,<br/>20 I think.<br/>21 The other is if you'd like a break now<br/>22 and go off the record.<br/>23 MR. STEWART: Yes, let's go off the<br/>24 record.</p>   | <p style="text-align: right;">Page 229</p> <p>1 Q. And that's a -- what is that?<br/>2 A. This is Miss Roseline Joannesse sent a fax to<br/>3 me, essentially saying we have not received any<br/>4 response to Mr. Leduc's letter of June 8th,<br/>5 which --<br/>6 Q. And that's the --<br/>7 A. -- I believe had the attachment of a draft<br/>8 contract.<br/>9 Q. Right. And she requests some news on this and<br/>10 to organize a meeting between the two companies,<br/>11 correct?<br/>12 A. Yes.<br/>13 Q. Did you respond to this letter?<br/>14 A. I do not remember responding to this letter.<br/>15 Q. Do you recall that you, in fact, didn't respond<br/>16 to the letter?<br/>17 A. I believe that I did not respond to the letter.<br/>18 Q. Why not?<br/>19 A. We already had a contract with Ethypharm, and<br/>20 the previous letter of the 8th of June said we'd<br/>21 like to regulize our relationship we already<br/>22 had. Adolfo had already signed an agreement<br/>23 with them, so there was no need for me to<br/>24 respond.</p> |

58 (Pages 226 to 229)

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| <p style="text-align: right;">Page 230</p> <p>1 Q. You also knew by this point, August 10th, 2001,<br/>2 that you were going to sever the ties with<br/>3 Ethypharm; didn't you?<br/>4 A. Yes.<br/>5 Q. And did you discuss responding through<br/>6 Mr. Herrera with Mr. Herrera?<br/>7 A. I don't recall doing that, but I would believe<br/>8 that if I received this directly, I would send<br/>9 it over to the Spanish management for<br/>10 appropriate response.<br/>11 Q. But in this instance, you don't recall doing<br/>12 that? You just didn't respond; is that correct?<br/>13 A. I don't recall.<br/>14 Q. You don't recall. I show you the next document.<br/>15 (Bentley Pharmaceuticals Board of<br/>16 Directors August 30, 2001 Meeting<br/>17 Minutes was marked Exhibit Number 45 for<br/>18 identification.)<br/>19 Q. Sir, by looking at the second page of Exhibit<br/>20 45, can you confirm for me that these are<br/>21 minutes of a Bentley board meeting held on<br/>22 August 30th, 2001?<br/>23 A. Yes.<br/>24 Q. And you attended in your capacity as CEO and</p>                               | <p style="text-align: right;">Page 232</p> <p>1 and unsupported by anything in the evidence.<br/>2 Q. Well, let me ask the question a different way.<br/>3 At this point in time, Bentley and Belmac are<br/>4 collecting or filing a number of patents<br/>5 relating to lansoprazole and omeprazole; is that<br/>6 correct?<br/>7 A. At this time, I'm not sure. We may have already<br/>8 filed all those patents.<br/>9 Q. Who -- sorry.<br/>10 A. Yeah.<br/>11 Q. Who is going to own that intellectual property,<br/>12 whether it's the know-how relating to omeprazole<br/>13 and lansoprazole, the patents relating to it?<br/>14 Who owns that property?<br/>15 A. It's owned by -- the lansoprazole, the<br/>16 omeprazole, and variations are all owned and<br/>17 filed by Laboratorios Belmac. The intranasal<br/>18 and transdermal are filed by Bentley.<br/>19 Q. So when it says here that there's a resolution<br/>20 that you, Mr. Price, and Mr. Horvath are<br/>21 authorized to establish a wholly owned Delaware<br/>22 subsidiary that shall own and operate the<br/>23 company's intellectual property, what<br/>24 intellectual property are we talking about</p> |
| <p style="text-align: right;">Page 231</p> <p>1 chairman of the board of Bentley?<br/>2 A. Yes.<br/>3 Q. I ask you to look at 02354, and there's a<br/>4 resolution made at the bottom of the page, which<br/>5 reads, "Resolved that the officers of the<br/>6 company are hereby authorized to establish a<br/>7 wholly owned Delaware subsidiary, the initial<br/>8 directors which shall be Messrs. Murphy, Price,<br/>9 and Horvath, which shall own and operate the<br/>10 company's intellectual property and that the<br/>11 officers are hereby authorized to take all<br/>12 necessary action to carry out the intent of such<br/>13 resolution."<br/>14 Do you see that?<br/>15 A. Yes.<br/>16 Q. Can you tell me about what that refers to?<br/>17 A. I actually don't remember. I think it has to do<br/>18 with tax planning.<br/>19 Q. At this point, your -- Bentley and Belmac are<br/>20 collecting behind the scenes a number of patents<br/>21 relating to omeprazole and lansoprazole; is that<br/>22 correct?<br/>23 MR. STEWART: Object to the<br/>24 characterization of "behind the scenes" as vague</p> | <p style="text-align: right;">Page 233</p> <p>1 there? Do you know?<br/>2 A. I don't know exactly. I believe this had to do<br/>3 with tax planning. If intellectual property is<br/>4 owned and managed in different countries around<br/>5 the world, there is different tax implications.<br/>6 And so I'm not aware whether this was ever done.<br/>7 Q. Okay. Who looked into that issue for you for<br/>8 Bentley?<br/>9 A. I believe it was Jordan Horvath.<br/>10 Q. How about Michael Price? Did he have anything<br/>11 to do with that?<br/>12 A. I don't know. I don't think so.<br/>13 (Fax to Mr. Murphy from Ms. Joannesse,<br/>14 dated September 17, 2001 was marked<br/>15 Exhibit Number 46 for identification.)<br/>16 Q. Mr. Murphy, do you recognize Exhibit 46?<br/>17 A. Yes.<br/>18 Q. What is that document?<br/>19 A. This is another fax from Roseline to myself,<br/>20 asking for an answer of her fax from June 8th<br/>21 and 10th -- August 10th.<br/>22 Q. So does that confirm for you that you didn't<br/>23 respond to the earlier June 8th and August 10th<br/>24 faxes from Mr. Leduc?</p>  |

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